

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

Complaint no. : 251 of 2023  
Date of complaint : 13.05.2022  
Date of order : 31.01.2024

1. Kamlesh Sharma,  
2. Kulbhushan Sharma,  
**Both R/o:** - P2/12, ATS Green Village,  
Sector-93A, Gautam Budh Nagar, Noida,  
Uttar Pradesh-201304.

**Complainants**

Versus

M/s Ramprastha Promoters and Developers Pvt. Ltd.  
**Regd. office at:** - 114, Sector-44, Gurugram-122002.  
**Also at:** - C-10, C-Block Market, Vasant Vihar,  
New Delhi.

**Respondent**

**CORAM:**  
Ashok Sangwan

**Member**

**APPEARANCE:**  
Gaurav Rawat (Advocate)  
Varun Katyal (Advocate)

**Complainants  
Respondent**

**HARERA**  
**ORDER**

1. This has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainants, 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	"Primera", Sector 37D, Village Gadauli Kalan, Gurugram
2.	Project area	13.156 acres
3.	Registered area	3.257 acres
4.	Nature of the project	Group housing colony
5.	DTCP license no. and validity status	12 of 2009 dated 21.05.2009 valid upto 20.05.2024
6.	Name of licensee	Ramprastha realtor Pvt. Ltd.
7.	Date of approval of building plans	25.04.2013 [As per information obtained by planning branch]
8.	RERA Registered/ not registered	Registered vide no. 21 of 2018 dated 23.10.2018
9.	RERA registration valid up to	31.03.2020
10.	Unit no.	B-103, 1 <sup>st</sup> floor, tower/block- B (Page no. 89 of the complaint)
11.	Unit area admeasuring	1720 sq. ft. (Page no. 89 of the complaint)
13.	Date of execution of apartment agreement buyer	16.10.2013 (Page no. 85 of the complaint)
14.	Possession clause	<b>15. POSSESSION</b> <b>(a) Time of handing over the Possession</b> Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities,

		documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA shall endeavour to complete the construction of the said <b>Apartment within a period of 54 months from the date of approvals of building plans by the office of DGTCP. The Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex.</b> <b>(Emphasis supplied)</b> (Page no. 99 of the complaint)
15.	Due date of possession	25.10.2017 [Note: - the due date of possession can be calculated by the 54 months from approval of building plans i.e., 25.04.2013]
16.	Grace period	Not utilized
17.	Total sale consideration	Rs.1,05,99,6891/- (As per schedule of payment page 112 of the complaint)
18.	Amount paid by the complainants	Rs.1,02,19,510/- (As per SOA dated 08.04.2023)
19.	Occupation certificate /Completion certificate	05.04.2023
20.	Offer of possession vide email dated	16.06.2023 (page 22 of reply)

### B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the complainants were allotted a unit bearing no. 103, 1st Floor, Tower-B, having super area of 1720 sq. ft. in the project of respondent company named "Primera" at Sector 37D, Gurugram for a total sale

consideration of Rs.1,05,99,891/- vide apartment buyer's agreement dated 16.10.2013.

- II. That as per clause 15(a) of the buyer's agreement, the respondent had to deliver the possession of the apartment within a period of 54 months + 120 day of grace period for applying and obtaining the occupation certificate in respect of the group housing project. Therefore, due date of possession comes out to be 16.04.2018. However, as per the latest orders of the Hon'ble authority respondent is not entitled for the grace period. Therefore, in calculating the due date of possession, grace period is not included.
- III. That during the period the complainants went to the office of respondent several times and requested them to allow them to visit the site, but it was never allowed saying that they do not permit any buyer to visit the site during construction period.
- IV. That the respondent was never able to give any satisfactory response to the complainants regarding the status of the construction and was never definite about the delivery of the possession. The complainants kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a slow pace, but to no avail.
- V. That the respondent has completely failed to honour their promises and has made a false promise to complete the construction of the project site within stipulated period.
- VI. That the respondent is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and

- Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.
- VII. That respondent send letter dated 17.07.2018 to the complainants mentioning that the pace of construction of the project has increased considerably in the last few months.
- VIII. That the respondent builder in order cheat and harass the complainants further introduced a timely payment rebate scheme. As per the said scheme complainants was required to make the entire remaining payment on or before 15.09.2019. Thereafter, the respondent will provide rebate of 8% in BSP and further undertake to handover possession by 31.03.2020 and the complainants made the payment accordingly. The complainants having dream of its own apartment in NCR signed the MoU dated 01.08.2019 in the hope that the unit will be delivered on or before 31.03.2020, but the dream of the complainants was shattered due to dishonest, unethical attitude of the respondent and till date despite repeated request and reminders by the complainants, respondent has failed to honour the terms and conditions of the MoU.
- IX. That complainants submitted application dated 03.09.2019 to the respondent for addition of the name of the co-applicant i.e. Mr.Kulbhushan Shamra in the said allotted unit and the same was done by the respondent.
- X. That as per section 18 of the Act of 2016, the promoter is liable to pay delay possession charges to the allottees of the unit, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale. Therefore, it is requested that

necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under the Act.

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

4. The complainants have sought following relief(s):
  - i. Direct the respondent to handover the possession of the unit and to pay delay possession charges at prescribed rate from the due date of possession till actual handing over of possession.
  - ii. Direct the respondent to provide the rebate as per the terms and conditions of the MoU dated 01.08.2019.
  - iii. Direct the respondent to provide the exact layout plan of the unit and get the conveyance deed executed in favour of the complainants and not to force them to sign any Indemnity cum undertaking.
  - iv. Direct the respondent not to charge monthly maintenance charges for a period of 12 months or more before giving actual possession of the unit or anything irrelevant which has not been agreed and payable by the complainants.
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.
  - i. That the possession of the unit has already been offered to the complainants vide email dated 16.06.2023.
  - ii. That the complainants are defaulters and have failed to make the timely payment of installments within the prescribed time. Further,



despite several follow-ups on the part of the respondent, the complainants have failed to come forward to accept the possession of the property.

- iii. That even all through these years, the complainants have never raised any dispute regarding delay in possession and any objections to the same was to be raised in a time bound manner without causing prejudice to any other party. The entire intention of the complainants made it crystal clear that they are investors who merely invested in the present project with an intention to draw back the amount as an escalated and exaggerated amount later.
  - iv. That despite several adversities and the unpredicted and unprecedented wrath of falling real estate market conditions, the respondent has made an attempt to sail through the adversities only to handover the possession of the property at the earliest possible to the utmost satisfaction of the buyers/allottees. Further, even in such harsh market conditions, the respondent has been continuing with the construction of the project and sooner will be able to complete the construction of the project.
  - v. That the Authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement as the same was executed much prior to coming into force of said Act or said Rules. Therefore, in the abovesaid premises the present complaint is not maintainable in its present form and ought to be dismissed with exemplary costs upon the complainants.
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**

The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection 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**

8. 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**

9. 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.*

10. 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 objections raised by the respondent**

**F. I Objection regarding the complainants being investor.**

11. The respondent has taken a stand that the complainants are investors and not consumer. Therefore, they are not entitled to the protection of the Act and are not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyers and paid total price of Rs.1,02,19,510/- to the promoter towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon

the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investor are not entitled to protection of this Act also stands rejected.

**F. II Objection regarding jurisdiction of authority w.r.t. apartment buyer's agreement executed prior to coming into force of the Act.**

12. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively. The authority is of the view that the Act nowhere provides nor can be so construed, that all previous agreements will be re-written after coming into force of the Act.

Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** decided on 06.12.2017 which provides as under:

*"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter...."*

*122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

13. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

*"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion."*



*Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

14. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

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

**G.I Direct the respondent to handover the possession of the unit and to pay delay possession charges.**

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

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

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

.....

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

*(Emphasis supplied)*

16. Clause 15(a) of the apartment buyer's agreement provides for handing over of possession and is reproduced below:

*"15. POSSESSION*

*(a). Time of handing over the Possession*

*Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA shall endeavour to complete the construction of the said **Apartment within a period of 54 months from the date of approvals of building plans by the office of DGTCP**. The Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex."*

17. 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 favour 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 allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer 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 allottees are left with no option but to sign on the dotted lines.

18. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 54 months from the date of approval of building plans i.e., 25.04.2013 and further provided in agreement that promoter shall be entitled to a grace period of 120 days for applying and obtaining occupation certificate in respect of group housing complex. As a matter of fact, the promoter has not applied for occupation certificate within the time limit prescribed by the promoter in the apartment buyer's agreement. As per the settled law, one cannot be allowed to take advantage of his own wrongs. Accordingly, this grace period of 120 days cannot be allowed to the promoter at this stage. Therefore, the due date of possession comes out to be 25.10.2017.
19. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under.

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

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

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

20. 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.
21. 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., 31.01.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
22. The definition of term 'interest' as defined under section 2(z a) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. —For the purpose of this clause—*
- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
23. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent /promoter which is the same as is being granted to the complainants in case of delayed possession charges.
24. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent



is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 15(a) of the apartment buyer's agreement executed between the parties on 16.10.2013, the possession of the subject apartment was to be delivered within a period of 54 months from the date of approval of building plans i.e., 25.04.2013 which comes out to be 25.10.2017. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 25.10.2017. The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 16.10.2013 executed between the parties. Occupation certificate was granted by the concerned authority on 05.04.2023 and thereafter, the possession of the subject unit was offered to the complainants vide email dated 16.06.2023 subject to signing of settlement/undertaking letter. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 16.10.2013 to hand over the possession within the stipulated period.

25. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation





certificate. In the present complaint, the occupation certificate was granted by the competent authority on 05.04.2023. The respondent offered the possession of the unit in question to the complainants only on 16.06.2023, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months time from the date of offer of possession. These 2 months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (16.06.2023) which comes out to be 16.08.2023.

26. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to delay possession charges at rate of the prescribed interest @10.85% p.a. w.e.f. 25.10.2017 till the expiry of 2 months from the date of offer of possession (16.06.2023) which comes out to be 16.08.2023 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

**G.II. Direct the respondent to provide the rebate as per the terms and conditions of the MoU dated 01.08.2019.**

27. The complainants have submitted that the respondent/builder vide MoU dated 01.08.2019 introduced a timely payment rebate scheme. As



per the said scheme, the complainants were required to make the entire remaining payment on or before 15.09.2019 and thereafter, the respondent will provide rebate of 8% in BSP. The complainants further submitted that believing on the assurances of respondent, they made the payment accordingly, but the respondent has failed to honour the terms and conditions of the MoU.

28. Considering the above-mentioned facts, the authority is of the view that as per clause 2(a) of the MoU dated 01.08.2019, the allottees are liable to pay all outstanding amount in terms of that MoU latest by 15.09.2019 and to pay all future demands in timely manner upon demand. However, as per the payment receipts annexed with the complaint, it is evident that the complainants had made their last payment towards BSP only on 05.11.2018 and no proof of payment has been placed on record by the complainants in corroboration of their claim regarding timely payment rebate. Since no documents have been placed on record by the complainants to substantiate and in support of the aforesaid contention, therefore the authority cannot deliberate upon the aforesaid relief.

**G. III Direct the respondent to provide the exact layout plan of the said unit.**

29. As per section 19(1) of Act of 2016, the allottees shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority, or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondent/promoter is directed to provide details of license and statutory approvals to the complainants within a period of 30 days.



**G. IV Direct the respondent to get the conveyance deed executed in favour of the complainants and not to force them to sign any Indemnity cum undertaking.**

30. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainants. Whereas, as per section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question.
31. The possession of the subject unit has already been offered to the complainants after obtaining completion certificate on 05.04.2023. Therefore, the respondent/builder is directed to handover the possession of the unit on payment of outstanding dues if any, within 30 days to the complainant/allottees and to get the conveyance deed of the allotted unit executed in their favour in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order. Further, only administrative charges of upto Rs.15000/- can be charged by the promoter-developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard vide circular dated 02.04.2018.
32. The respondent is further directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in complaint bearing no. **4031 of 2019** titled as **Varun Gupta V. Emaar MGF Land Ltd.**

**G.V Direct the respondent not to charge monthly maintenance charges for a period of 12 months or more before giving actual possession of the unit or anything irrelevant which has not been agreed and payable by the complainants.**



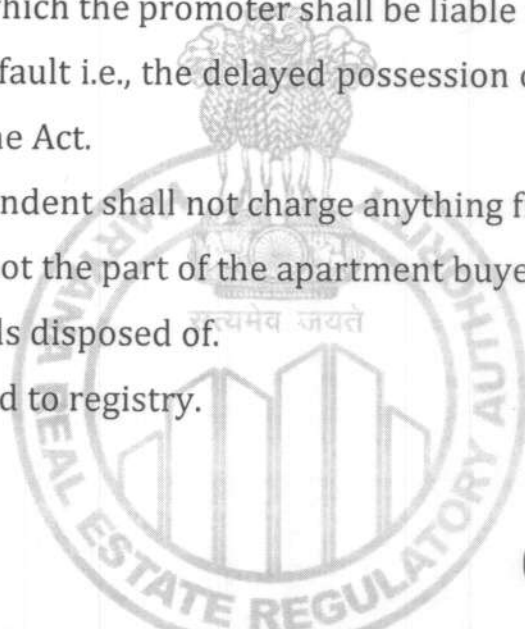
33. **Maintenance charges:** - This issue has already been dealt by the authority in complaint titled as *Varun Gupta Vs. Emaar MGF Land Limited (supra)*, wherein, it is held that the respondent is right in demanding advance maintenance charges at the rates prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottees even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.
34. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

**H. Directions of the authority**

35. 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):
- i. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 25.10.2017 till expiry of 2 months from the date of offer of possession (16.06.2023) i.e., upto 16.08.2023 only as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.
  - ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - iii. The respondent is directed to handover the possession of the unit on payment of outstanding dues if any, within 30 days to the

complainant/allottees and to get the conveyance deed of the allotted unit executed in their favour in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.

- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
  - v. The respondent shall not charge anything from the complainants which is not the part of the apartment buyer's agreement.
36. Complaint stands disposed of.
37. File be consigned to registry.



**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.01.2024

**HARERA**  
**GURUGRAM**