

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

Complaint no.	1571 of 2023
Date of filing complaint	06.04.2023
Date of decision	07.11.2023

Suman Bala and Deepak Sharma R/o: 207-A/1, Ground Floor, K No.-168, Shyam Vihar, Phase-1E Block, Najafgarh, New Delhi-110043	Complainants
Versus	
JMK Holding Pvt Ltd Regd. Address at: 1302, 13 th floor, Dr. Gopal Das Bhawan, 28 Barakhamba Road, Cannught Place, New Delhi-110001	Respondent
CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Ms. Jagdeep Kumar	Complainant
Sh. Neeraj Kumar	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the 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. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Grand IVA", a part of mixed land development project, Sector 65, Gurugram
2.	Nature of the project	Affordable group housing
3.	Project area	9 acres
4.	DTCP license no.	157 of 2014 dated 11.09.2014 valid up to 31.03.2023
5.	Name of licensee	JMK Holdings Pvt. Ltd
6.	RERA Registered/ not registered	13 OF 2017 DATED 03.07.2017
7.	Allotment Letter	02.04.2018 (At page 23 of the complaint)
8.	Unit no.	2-107, tower 2 (Page 28 of the complaint)
9.	Unit area admeasuring (Super area) Carpet area	605.09 sq. ft. 94.94 sq.ft. (Page 28 of the complaint)
10	Building plan	11.05.2016 (As per DTCP)
11	Environment clearance	29.09.2016

10.	Date of builder buyer agreement	20.04.2018 (Page 25 of the complaint)
11.	Possession clause	<p>Within 60 (sixty) days from the date of issuance of Occupancy Certificate, the Developer shall offer the possession of the Said Flat to the Allottee(s). Subject to Force Majeure circumstances, receipt of Occupancy Certificate and Allottee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by Developer in terms of the Agreement and not being in default under any part hereof including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, the Developer shall offer possession of the Said Flat to the Allottee(s) 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.</p>
12.	Due date of possession	29.03.2021 (Calculated from the date of environment clearance, being later including grace period)
13.	Total sale consideration	Rs. 24,67,830/- (As per page no. 34 of reply)

14.	Amount paid by the complainant	Rs. 27,31,264/- (As alleged by the complainant)
15.	Occupation certificate	24.04.2021
16.	Notice for offer of possession	24.07.2021 (Annexure P/3 at page 61 of complaint)

B. Facts of the complaint:

3. That in Dec 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. The respondent also approached the complainant 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 December 2017, the 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 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 installments over three years period. All payments are time bound and have no relation to the construction status of the project. 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 605.090 sq ft and balcony area 94.940 sq ft

under draw of lots in the aforesaid project of the developer and made payment of application amount of Rs. 1,23,392/- vide cheque No 000098 dt 15th December 2017.

4. That in the said application form, the price of the said flat was agreed at the rate of Rs. 4000/- per Sq. ft. for carpet area and Rs 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.
5. That on 02/04/2018 the respondent issued an offer of allotment through letter dated 02/04/2018 in the name of complainant, respondent offered a residential unit no. 2-107, Tower 2 (Carpet Area 605.090 sq ft and balcony area 94.940 sq ft) "Grand IVA" Sector 103, Gurgaon, Haryana at price of Rs. 24,67,830/- (Exclusive of taxes).
6. The respondent raise a demand of 62.5% 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. The complainant opposes the payment demands of the respondent. The complainant visited the office of respondent on 20/04/2018 to resolve the issue of unreasonable demand of payments in amicable manner but respondent did not rectify the mistake of respondent's self proclaim & arbitrary payment plan and taking advantage his own wrong, respondent warn the complainant, that respondent will forfeit the booking amount if complainant did not pay the demanded within due time, complainant paid the unreasonable

demand of respondent under duress, respondent recover the entire sale consideration in one year instead of taking it in three year.

7. That from the date of submitting application for allotment 15.12.2017 and till 03.05.2019, the respondent had raised various demands for the payment of installments 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 were and have always been ready and willing to fulfill their part of agreement, if any pending.
8. That as per advertisement and application form, the sales consideration for said flat was **Rs. 24,67,830/-** (which includes the cost of providing the common facilities) exclusive of Service Tax and GST. The complainant have already paid **Rs. 27,31,264/-** towards total sale consideration and applicable taxes as on today to the respondent, as demanded time to time
9. That on 20/04/2018, the buyer's agreement was executed between respondent and complainant, buyer agreement 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, whereas agreement nowhere specify the delay possession charges in event of delay in possession of flat. The complainant opposed all illegal, arbitrary, unilateral and discriminatory terms of flat buyer's agreement, but

under duress complaint was force to sign the flat buyer agreement to save the earnest money from forfeiting. The 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.

10. 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.
11. That the time limit prescribed under the affordable housing policy has already expired and over. It appears from the conduct of the respondent that he was not intended to deliver the possession of the said flat/ unit to the complainant/ flat buyer within due time. The respondent's duty is 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.
12. That on 10th August 2021, the complainant received an courier through which the respondent have sent an intimation regarding offer of possession letter dated 24.07.2021. 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 & conditions of Haryana Affordable Policy 2013. The respondent did not even credit a single penny for delay possession charges as per RERA Act 2016. The 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. The respondent raised a demand of administrative charges Rs 17,700/-, external electrification charges Rs 19,557/-, IFSD(interest free security deposite) of Rs15,000/-, meter connection charges Rs 4,544/-, water connection charges(area based) Rs 3,207/-, and user charges for operational cost of utility services of Rs 28,703/- inclusive of 18% 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 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 x 2.5 m to the complainant, which the promoter has not earmarked hence denied.

13. That that complainant informed the respondents on 20/06/2022 to draw attention 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. The complainant demanded credit of input tax credit, interest for delayed possession period as per RERA Act 2016 and urges respondent to pay interest for early payments of consideration value , refund all unreasonable demands and fulfill the obligation of providing and earmarked two wheeler scooter parking of the space prescribed in policy. As on 20/06/2022 the respondent did not completed the construction activities at project site. complainant visited the site and found that till 20/06/2022 , 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 made 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.

C. Relief sought by the complainant:

14. The complainant has sought following relief(s):

- i. Direct the respondent to pay delay possession charges along with prescribed rate of interest.
- ii. Restrain the respondent from implementing a self-proclaim & arbitrary payment plan which is divergent from payment plan specified under Haryana Affordable Housing Policy 2013 and also restrain Respondent from imposing any interest on complainant for paying installments as per Haryana Affordable Housing Policy 2013 & protesting against the arbitrary

- payments demands formulated under self-proclaim & arbitrary payment plan of respondent.
- iii. Restrain the respondent to charge external electrification charges of Rs. 19,557/- from complainant.
 - iv. Restrain the respondent to charge water connection charges of Rs. 3,207/- from complainant.
 - v. Restrain the respondent to meter connection charges of Rs. 4544/- from complainant.
 - vi. Restrain the respondent to charge for maintenance or operational cost of utility services Rs 28,703/- from complainant.
 - vii. Restrain the respondent to charge for interest free security deposit of Rs 15,000/- from complainant.
 - viii. Direct the respondent to earmark two-wheeler parking for complainant in the said project "GRAND IVA". Sector 103 Gurugram, Haryana.
 - ix. Direct the respondent to earmarked balance available parking space, if any, beyond the allocated two-wheeler parking sites, can be earmarked as free visitor car parking space.
 - x. Direct the respondent to update the status of construction and completion certificate of project.
 - xi. Direct the respondent to pay an amount of Rs. 55,000/- to the complainant a cost of the present litigation.

D. Reply by respondent:

The respondent by way of written reply dated 29.08.2023 made the following submissions:

15. That the complainant vide application no.31062 dated 17.12.2017 had applied to the respondent for allotment of flat in the project "GRAND IVA" under the Affordable Housing Policy 2013.
16. That in terms of the Affordable Housing Policy 2013, the draw of lots was held on 27.03.2018 in presence of the officials of the Directorate of Town & Country Planning and the complainant was successful in the said draw and accordingly the respondent issued the allotment of the flat being flat no.2-107 in Tower-2, having carpet area 605.09 sq.ft on 1st floor and balcony area 94.94 sq.ft. together with the two wheeler parking site, in the project.
17. That the aforesaid allotment was subject to payment schedule which was time linked and independent of status of the constructions. Further, buyer's agreement was executed dated 20.04.2018 by and between the parties wherein the delivery of possession of flat was subject to the terms and conditions as contained in the agreement.
18. That the approval for the project "GRAND IVA" from the Directorate of Town & Country Planning was received vide approval dated.15.09.2015 while the environment clearance was received vide approval dated 29.09.2016.
19. That the occupancy certificate for the building was received on 20.04.2021 and accordingly offer of possession was made to the complainant vide offer of possession letter dated 24.07.2021.

20. That it is respectfully submitted that prior to the completion of the project, various force majeure circumstances (such as construction bans, Covid-19 pandemic, various lockdowns etc) affected the regular development of the real estate project. The deadly and contagious Covid-19 pandemic had struck which have 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.
21. That therefore, it is manifest that both the first wave and second wave of Covid had been recognized by this Hon'ble Authority and the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula to be Force Majeure events being calamities caused by nature which had adversely affected regular development of real estate projects. All these facts have been mentioned hereinabove to highlight the devastating impact of Covid-19 on businesses all over the globe.
22. That it is respectfully submitted that all these facts were and are in the notice and knowledge of the complainant and the complainant has pleaded deliberate ignorance about the same. The complainant has intentionally omitted any reference to the aforesaid clauses of agreement and hence there is no delay on the respondent in handing over the possession of the flat to the complainant.
23. All other averments made in the complaint were denied in toto.
24. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be

decided based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

25. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has completed territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the 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.

26. 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 respondents.

F.1 Objection regarding force majeure conditions

27. The respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond the control of the respondent such as COVID-19 outbreak, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020* dated 29.05.2020 which has observed that-

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

28. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later. In the present case, the date of approval of building plan is 11.05.2016 and environment clearance is 29.09.2016 as mentioned in the reply. The due date is calculated from the

date of environment clearance being later, so, the due date of subject unit comes out to be 29.09.2020. **Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.** The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 29.09.2020 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to **29.03.2021.**

G. Findings on the relief sought by the complainant.

Relief sought by the complainant: The complainant has sought following relief:

- 1) Direct the respondents to pay the delay possession charges along with prescribed rate of interest.

G.I Delay Possession Charge

29. In the present complaint, the complainant intends 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."

30. Clause 5.1 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

- (i) *"Within 60 (sixty) days from the date of issuance of Occupancy Certificate, the Developer shall offer the possession of the Said Flat to the Allottee(s). Subject to Force Majeure circumstances, receipt of Occupancy Certificate and Allottee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by Developer in terms of the Agreement and not being in default under any part hereof including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, the Developer shall offer possession of the Said Flat to the Allottee(s) 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.."*

31. At the inception, it is relevant to comment on the pre-set possession clause of the floor buyer's agreement wherein the possession has been subjected to numerous terms and conditions and force majeure circumstances. The drafting of this clause is not only vague but so heavily loaded in favour of the promoters that even a single default by the allottee in fulfilling obligations, 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.

32. **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.

- 33. Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate of interest on the amount already paid by him. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

34. 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.
35. 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., 07.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
36. The definition of term 'interest' as defined under section 2(za) 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—
the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*

the 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;"

37. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.75% by the respondents/promoters which is the same as is being granted to the complainants in case of delayed possession charges.
38. 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., 24.07.2021 plus two months which comes out to be 24.09.2021, 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.

G.II Restrain the respondent from implementing a self-proclaim & arbitrary payment plan which is divergent from payment plan specified under Haryana Affordable Housing Policy 2013 and also restrain respondent from imposing any interest on complainant for paying installments as per Haryana Affordable Housing Policy 2013 & protesting against the arbitrary payments demands formulated under self-proclaim & arbitrary payment plan of respondent

39. The complainant in its pleading stated that the respondent allotted the unit on 02.04.2018 along with the demand of Rs.15, 42,395/- which is more than 50% of the total cost of the unit which is also evident from the

allotment letter at pg. 23 of complaint. 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.

G.III Restrain the respondent to charge external electrification charges of Rs. 19,557/- from complainant.

40. 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.

G.IV Restrain the respondent to charge water connection charges of Rs. 3,207/- from complainant

41. 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.

G.V Restrain the respondent to meter connection charges of Rs. 4,544/- from complainant.

42. 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.

G.VI Restrain the respondent to charge for maintenance or operational cost of utility services Rs 28,703/- from complainant

43. The respondent in the present matter has charged operational cost of utility of Rs. 28,703/- 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 colomser 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.

G.VII Restrain the respondent to charge for interest free security deposit of Rs 15,000/- from complainant

44. 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.

G.VIII Direct respondent to earmark two-wheeler parking for complainant in the said project "GRAND IVA". Sector 103 Gurugram, Haryana

45. 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 0.8mx 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.

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

46. 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.

G.X Direct the respondent to update the status of construction and completion certificate of the project.

47. 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.

G.XI Litigation Cost

48. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation

H. Directions of the authority

49. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- The respondents are directed to pay interest at the prescribed rate of 10.75% p.a. for every month of delay on the amount paid by the complainant from the due date of possession i.e., 29.03.2021 till offer of possession i.e., 24.07.2021 plus 2 months 24.09.2021 to the complainant as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoter to the allottees respectively within a period of 90 days from date of this order as per rule 16(2) of the rules.

- The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period against their unit to be paid by the respondents
- The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoters which is the same rate of interest which the promoters would be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

50. Complaint stands disposed of.

51. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.11.2023

HARERA
GURUGRAM