



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

<b>Complaint no. :</b>	<b>7525 of 2022</b>
<b>Date of Filing Complaint:</b>	<b>16.12.2022</b>
<b>Order Reserve On:</b>	<b>18.08.2023</b>
<b>Order Pronounced On:</b>	<b>24.11.2023</b>

1. Satya Poddar 2. Shakuntala Poddar <b>R/O:</b> H. no. K-26, Mahaveer Nagar, Tonk Road Jaipur, Rajasthan- 302018	<b>Complainants</b>
Versus	
1. M/s BPTP Limited 2. Countrywide Promoters Private Limited <b>Regd. office:</b> OT-14, 3 <sup>rd</sup> Floor, Next Door Parklands, Sector-76, Fraidabad, Haryana- 121004 <b>Corporate Office:</b> 28, ECE, House, First Floor, K.G. Marg, New Delhi-110001	<b>Respondents</b>

<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Sukhbir Yadav (Advocate)	Complainant
Sh. Harshit Batra (Advocate)	Respondent

**ORDER**

1. The present complaint 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 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 complainants, 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	"Mansions Park Prime" at sector 66, Gurgaon, Haryana
2.	Nature of the project	Group Housing Colony
3.	Project area	11.068 acres
4.	DTCP license no.	31 of 2008 dated 18.02.2008 valid upto 17.02.2020
5.	Name of licensee	Shyam and 4 others
6.	RERA Registered/ not registered	Not Registered (Planning Branch is directed to take necessary actions)
7.	Unit no.	MA1-601, Unit 1, Tower M (page no. 68 of complaint)
8.	Unit area admeasuring (super area)	2764 sq. ft. (page no. 68 of complaint)
9.	Increased unit area	3044 sq. ft.



		(as per offer of possession letter on page no. 110 of complaint)
10.	Date of application	05.07.2010 (page no. 52 of complaint)
11.	Date of flat buyer agreement	01.02.2011 (page no. 61 of complaint)
12.	Addendum agreement	01.02.2011 (page no. 94 of complaint)
13.	Possession clause	<b>3. Possession</b> <i>3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the purchaser(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc, as prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, the seller Confirming Party proposes to hand over the possession of The Flat to the Purchaser(s) within a period of 36 months from the date of booking/registration of flat. The Purchaser (s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180 days after the expiry of 36 months, for applying and obtaining the occupation</i>



		<i>certificate in respect of the Colony from the Authority.</i>
14.	Due date of possession	05.07.2013 (calculated from the date of booking as per possession clause) Note: Grace period is not allowed.
15.	Basic Sale Consideration (As per BBA)	Rs. 1,03,65,000/- (page no. 68 of complaint)
16.	Total sale consideration	Rs. 1,70,75,809/- (as per SOA dated 06.03.2020 page no. 110 of complaint)
17.	Amount paid by the complainants	Rs. 1,22,41,485/- (as per SOA dated 06.03.2020 page no. 110 of complaint)
18.	Occupation certificate	14.02.2020
19.	Offer of possession	06.03.2020 (page no. 107 of complaint)

**B. Facts of the complaint:**

3. That, in June 2010 the complainant, Mr. Satya Poddar (the Complainant) received a marketing call from the office of respondent no. 1 (BPTP Ltd.), who represents himself as sales manager of the respondent no. 1 and marketed the residential project name and style BPTP "Park Prime Mansions" situated at Sector - 66, Gurugram. The complainants visited the sales office of the respondents and consulted with the marketing staff of the respondents. The marketing staff of the respondents showed a rosy picture of the project and allured with proposed specifications



and assured of the timely delivery of the flat. The marketing staff of the respondent gave a pre-printed application form and assured that possession of the flat will be delivered within 36 months from the date of booking.

4. That being relied on the representations and assurances given by the respondents, on 05.07.2010, the complainants booked one 4 BHK flat admeasuring 2764 sq. ft. bearing no. MA1-601 in Mansions Park Prime, sector -66, Gurgaon, being developed by the respondent and paid Rs. 10,00,000/- towards the booking amount and signed a pre-printed application form. The Flat was purchased under the construction-linked Plan for a sale consideration of Rs. 1,28,36,618/-.
5. That on 01.12.2011, a pre-printed, arbitrary, one-sided, and ex-facie flat buyer agreement was executed between complainants and respondent no.1 and no. 2. As per clause no. 3.1 of flat buyer agreement, respondents has to give possession of flat "within a period of thirty-six (36) months from the date of booking/registration of the flat. The Flat was booked on 05.07.2010 inter alia due date of possession was 05.07.2013.
6. That the respondent after passing the due date of possession an addendum to the agreement dated 20.03.2014 was executed which was to become effective from the date of its execution and was co-terminus with the agreement.
7. Thereafter the complainants kept paying the demands raised by the respondents. As per the statement of account dated 03.02.2017 issued by the respondent, the complainants have paid Rs. 1,22,41,485/-.
8. That the respondents sent a demand notice dated 05.11.2016 and called the complainants to pay Rs. 1,22,585/- as VAT.





9. That upon clarifications being sought by the complainants, the respondents clarified in an email dated 30.11.2016, that value added tax is applicable on all properties & that the complainants in terms of the agreement was liable to pay all charges, and taxes, including any fresh incidence of tax levied by the competent authority and any other statutory charges, including enhancement of such taxes by the government.
10. That the complainants did not agree to the demand of Rs. 1, 22,585/- raised by the respondents, but under protest, the complainants made payment of that demand, which was acknowledged by the respondents vide email dated 02.02.2017.
11. That the respondents were not giving possession as per the agreed timeline, complainants issued a notice to respondents on dated 07.07.2017, inter-alia calling the respondents to refund the total paid amounts of Rs. 1,21,18,627/- along with interest at 24% per annum, and to further refund Rs. 1,22,858/- paid on account of excess VAT, with interest at 18% per annum. The complainants had also called the respondents to pay compensation against the costs incurred.
12. Thereafter, a complaint was filed before the Hon'ble NCDRC vide consumer complaint No. 3197 of 2017, and the same was withdrawn by the complainant on 18.11.2022.
13. That on 05.05.2020, the respondents sent a copy of the letter of offer of possession of the unit by email and demanded Rs. 45, 47,202/-. The letter was falsely dated 06.03.2020 but mailed/delivered to the complainants two months later, on 05.05.2020. The original letter has still not been delivered to the complainants.



14. That the statement of account accompanying the offer of possession contains several unreasonable demands, and errors of omission and commission, many of which have been reviewed by the Harera Committee in July 2021. The extra charges reviewed by Committee are as follows: i.e., Rs. 18,65,972/- under the head "Cost Escalation" and Rs. 2,48,086/- under the head "Electrification and STP Charges". As per the apartment buyer agreement, the cost of electrification charges+ fire fighting + power backup charges are Rs. 50/- per sq. ft. Hence, demand under a different head is completely unreasonable. On some of the price components, the GST has been computed at the full rate of 18%, without the benefit of one-third abatement allowed under the GST law. For example, the GST has been applied at the full rate of 18% on PLC, and not the reduced rate of 12% applicable on BS and all other components of the total price. Moreover, the respondent increased the super area of the flat by 280 Sq. Ft. without any justification (original super area 2764 Sq. Ft. - revised super area 3044 sq. ft. and demanded Rs. 9,78,600/-.
15. That as per the statement of account total net basic sale price of the unit is Rs. 1,03,65,000/-. This price was reduced by 3% or Rs 3,10,950, on account of a credit note issued by the broker (for the broker agreeing to accept a lower brokerage fee. The builder-buyer agreement also provided a recurring discount of 5% for timely payment of the demands raised.
16. That as per clause No. 35 of the booking form and clause no. 12.11 of the builder buyer agreement "the basic sale value is escalation free, but it is subject to an escalation of price of steel, cement and other raw material beyond 10% increase as per index price as on 01.09.2009. The respondents did not provide the correct calculation of cost. A certificate



from a cost accountant must be required to ascertain the actual cost of construction and its price index.

17. That since May 2013 complainants have regularly visited the office of respondents as well as the construction site and made efforts to get possession of the allotted flat, but all in vain. The complainants have never been able to understand/know the actual status of construction. Though towers seemed to be built up, no progress was observed on finishing and landscaping work. The respondent sent several emails of construction updates, which were not showing the actual status of the project. Moreover, the respondent kept boasting about the project status but never informed about the firm date of possession. It is again highly pertinent to mention here that till today (more than 12 years from the date of booking), civil and mechanical work is not yet completed.
18. That the main grievance of the complainants in the present complaint is that despite the complainants having paid more than 95% of the actual amount of the flat and being ready and willing to pay the remaining amount (if any), the respondents party has failed to deliver the possession of the flat as per specifications and with amenities shown in the brochure, and the builder buyer agreement
19. That the complainants had booked the flat with the intention that after purchase, their family will live in their flat. That it was promised by the respondents party at the time of receiving payment for the flat that the possession of a fully constructed flat along with basement and surface parking, landscaped lawns, club/ pool, school, EWS, etc. as shown in the brochure at the time of sale, would be handed over to the complainants as soon as construction work is complete i.e. by July 2013. Thereafter





respondents assured to complainants that the physical possession of the flat will be handed over by January 2014.

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

20. The complainants have sought following relief(s):

- (i) Direct the respondent to pay delay possession interest from the due date of possession till the actual handover of the flat.
- (ii) Direct the respondent to show the date of issuance of original offer of possession to be 5 May 2020 on which it was emailed to the complainants instead of 06.03.2020.
- (iii) Direct the respondent to handover the physical possession of the flat.
- (iv) Direct the respondent to provide the calculation of carpet area and common area.
- (v) Restrain the respondent from charging STP and electrification charges as per BBA, electrification is already included in other head and builder demanded STP charges without actual cost certificate from a cost accountant or Architect.
- (vi) Direct the respondent from charging the GST at the full rate of 18% as opposed to reduced rate of 12% under the law. And to pass the benefit of GST input tax credits to the complainants.
- (vii) Direct the respondent from charging administrative charges or additional FAC, either directly or through business park maintenance services or such other entities' appointed by the respondents to provide maintenance or other services.

**D. Reply by respondent:**

The respondent by way of written reply made following submissions:



21. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Ld. Authority, and can only be adjudicated by the Adjudicating Officer/Civil Court. Therefore, the present complaint deserves to be dismissed on this ground alone.
22. That the complainant has not come before this Authority with clean hands and has suppressed vital and material facts from this Authority.
23. That the complainant approached the respondent and expressed interest in booking of an apartment in the residential group housing colony developed by respondent known as "Park Prime" and the multi-storey apartments being developed on 2 acres of Land consisting of four towers have been named as "Mansions", at Sector 66, Gurugram (hereinafter referred to as the "Project"). Prior to the booking, the complainant conducted extensive and independent enquiries with regard to the project, and only after being fully satisfied on all aspects, that he took an independent and informed decision, uninfluenced in any manner by the answering respondent, to book the unit in question.
24. That thereafter the complainant, vide an application form dated 05.07.2010 applied to the respondent for provisional allotment of a unit no 601 in block M1. Pursuant thereto, unit bearing no MA1-601 Unit 1 Mansion Tower M having tentative super area of 2764 sq. ft. was allotted vide provisional allotment letter. The complainant consciously and willfully opted for a construction-linked payment plan for remittance of sale consideration for the unit in question and further represented to the answering respondent that he shall remit every



- installment on time as per the payment schedule. The answering respondent had no reason to suspect the *bonafide* of the complainant and proceeded to allot the unit in question in her favor.
25. Thereafter, a flat buyer's agreement dated 01.02.2011 was executed between the complainant and the respondents wherein respondent no. 1 was noted to be a seller and respondent no. 2, as a confirming party. The buyer's agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
26. That as per clause 3.1 of the buyer's agreement, the due date of possession was subject to the allottees having complied with all the terms and conditions of the flat buyer's agreement. That being a contractual relationship, reciprocal promises are bound to be maintained. That it is respectfully submitted that the rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the flat buyer's agreement which continue to be binding upon the parties thereto with full force and effect.
27. That the remittance of all amounts due and payable by the complainant under the flat buyer's agreement as per the schedule of payment incorporated in the said flat buyer's agreement was of the essence of the said flat buyer's agreement.
28. That it is submitted that the complainant had defaulted/delayed in making the due payments, since the very beginning, upon which, reminders were also served to the complainant. That the *bonafide* of the answering respondent is also essential to be highlighted at this instance, who had served a number of request letters/demand notes and



reminders to the complainant to ensure that the payments are made in a timely fashion. In circumstances of timely payment, timely payment rebate was also given by the answering respondent.

29. It is to be noted that the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts, before passing of the subjective due date of offer of possession.
30. That from the facts indicated above and documents appended, it is comprehensively established that a period of 166 days was consumed on account of circumstances beyond the power and control of the answering respondent, owing to the passing of aforesaid Orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure, as stated above. Thus, the answering respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above, and therefore the same is not to be taken into reckoning while computing the period of computation of due date of possession, as has been provided in the flat buyer's agreement. In a similar case where such orders were brought before the Ld. Authority was in the complaint no. 3890 of 2021 titled "Shuchi Sur and Anr. vs. M/s. Venetian LDF Projects LLP" which was decided on 17.05.2022, wherein the Ld. Authority was pleased to allow the grace period. In the present case, the benefit of the above affected 166 days and 180 days of grace period need to be rightly given to the respondent builder.
31. That despite there being a number of defaulters in the project, the respondent had to infuse funds into the project and have diligently developed the project in question. That it must be noted by the Ld.



Authority that despite the default caused, the respondent applied for occupation certificate in respect of the said unit and the same was thereafter issued vide memo bearing no. ZP-374/JD(RD)/2020/4393 dated 14.02.2020. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilized by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.

32. That thereafter, the complainant was offered possession of the unit in question through a letter of offer of possession dated 06.03.2020. At this stage, it is imperative to note that the super area of the unit which was tentative and had to be finalized after completion of construction of the unit, as per the buyer's agreement, was finally noted to be 3044 sq. ft. The same was communicated to the complainant at the time of offer of possession. Accordingly, the complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainant. The complainant delayed the procedure of taking the possession of the said unit on her own account.





33. That at this stage, it needs to be categorically noted that after the offer of possession was made, the answering respondent has been continuously requesting the complainant to fulfil the necessary formalities and take possession of the unit. However, despite multiple requests and reminders by the answering respondent, the complainant has failed to fulfil her obligation as per the flat buyer's agreement as well as his statutory obligation. Due to the lackadaisical approach of the complainant, the complainant failed to oblige her obligations as per the buyer's agreement and failed to take the possession of the said unit.
34. That the answering respondent earnestly requested the complainant to obtain possession of the unit in question and further requested the complainant to execute a conveyance deed after completing all the formalities regarding delivery of possession. However, the complainant did not pay any heed to the legitimate, just and fair requests of the answering respondent.
35. That the total sale consideration of the unit is Rs. 1,70,75,809/- and the complainant had paid only Rs. 1,22,41,485/- The complainant grossly stands in default for making the remaining payment. It is imperative to note that all the charges that are being challenged/against which reliefs have been sought, are valid and legal demands, as per the categorically agreed terms and conditions of the flat buyer's agreement. It is a matter of fact and record that at no point in time, whomsoever, did the complainant object to these demands/the clauses of the flat buyer's agreement. The present complaint and the evidence available on record shows that the same is the result of an afterthought, in order to earn monetary benefits and escape the obligation of paying the interest for delay in making the payment.



36. That the complainant did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the flat buyer's agreement and consequently in order to needlessly linger on the matter, the complainant refrained from obtaining possession of the unit in question. The complainant needlessly avoided the completion of the transaction with the intent of evading the consequences enumerated in the flat buyer's agreement. Therefore, there is no equity in favour of the complainant. Without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainant and without prejudice to the contentions of the respondent, it is submitted that the alleged interest frivolously and falsely sought by the complainant was to be construed for the alleged delay in delivery of possession. The complainant is not entitled to contend that the alleged period of delay continued even after receipt of offer for possession when the complainant herself has delayed in making the payments as stated above. The complainant has consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the complainant is liable for the consequences including holding charges, as enumerated in the flat buyer's agreement, for not obtaining possession.
37. That the complainant is not only in breach of the flat buyer's agreement but also in breach of Section 19(10) of RERA (assuming without in any manner admitting the provisions of the Act to be applicable to the project in question), by failing to take possession of the unit even after two months from the date of receipt of the occupation certificate. The complainant is responsible for all the consequences of breach of the flat buyer's agreement and violation of RERA.



38. That moreover, without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the complainant, the respondent has credited an amount of Rs. 2,87,122/- as compensation to the complainant, as evident from the offer of possession. Without prejudice to the rights of the respondent, delayed interest, if any has to be calculated only on the amounts deposited by the complainant towards the basic principal amount of the unit in question and not on any amount credited by the respondent, or any payment made by the complainant towards delayed payment charges (DPC) or any taxes/statutory payments, etc.
39. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

40. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

41. 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**



42. 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.*

43. 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.

**G. Entitlement of the complainant:**

- (i) **Direct the respondent to pay delay possession interest from the due date of possession till the actual handover of the flat.**
  - (ii) **Direct the respondent to show the date of issuance of original offer of possession to be 5 May 2020 on which it was emailed to the complainants instead of 06.03.2020.**
  - (iii) **Direct the respondent to handover the physical possession of the flat.**
44. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.



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

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."*

45. Clause 3.1 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"3

*3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the purchaser(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc, as prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, the seller Confirming Party proposes to hand over the possession of The Flat to the Purchaser(s) **within a period of 36 months from the date of booking/registration of flat.** The Purchaser (s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180 days after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the Authority. ..."*

46. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges, 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.*

47. 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.
48. 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., 24.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75% per annum.
49. The definition of term 'interest' as defined under section 2(z a) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

50. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75% p.a. by the



respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.

51. On consideration of the circumstances, the evidence and other record and submissions made by 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. It is a matter of fact that buyer's agreement executed between the parties on 01.02.2011, the possession of the booked unit was to be delivered within a period of 36 months from the date of booking/registration of flat. The date of booking is 05.07.2010 and the due date comes out to be 05.07.2013. the occupation certificate for the project was received on 14.02.2020 and subsequently offer for possession of unit was made on 06.03.2020.

52. Accordingly, 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 complainant is entitled to delayed possession charges at the prescribed rate of interest i.e., 10.75% p.a. for every month of delay on the amount paid by them to the respondent from the due date of possession i.e., 05.07.2013 till the offer of possession i.e., 06.03.2020 plus two months i.e., 06.05.2020 as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

(iv) **Direct the respondent to provide the calculation of carpet area and common area.**

53. The authority is of the view that as per section 19(1) of the Real Estate (Regulation and Development) Act 2016, the allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such



other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.

54. In view of the same, the respondent/promoter is directed to provide the area calculation of the subject unit to the complainant's/allottees.

**(v) Restrain the respondent from charging STP and electrification charges as per BBA, electrification is already included in other head and builder demanded STP charges without actual cost certificate from a cost accountant or Architect.**

55. While issuing of offer of possession of the allotted unit, the respondent builder demanded a sum of Rs. 2,48,086/- under the head electrification and STP charges. It is pleaded on behalf of complainants that they are not liable to pay that amount and demand for the same as been raised illegally. But the plea advanced in this regard is devoid of merit. The authority concurs with the recommendations made by the committee and Rs. 81.50 per sq. ft. would be charged towards electrification and STP charges from the allottee.

**(vi) Direct the respondent from charging the GST at the full rate of 18% as opposed to reduced rate of 12% under the law. And to pass the benefit of GST input tax credits to the complainants.**

56. The respondent is directed to charge the Gst as per rules and regulations and for the input tax credit, the attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/ Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below:

*"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."*

57. The intention of the legislature was amply clear that the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017. As per the above said provisions of the Act, it is mandatory for the respondent to pass on the benefits of 'Input Tax Credit' by way of commensurate reduction in price of the flat/unit. Accordingly, respondent should reduce the price of the unit/consideration to be realized from the buyer of the flats commensurate with the benefit of ITC received by him. The promoter shall submit the benefit given to the allottee as per section 171 of the HGST Act, 2017.

58. The builder has to pass the benefit of input tax credit to the buyer. In the event, the respondent-promoter has not passed the benefit of ITC to the buyers of the unit then it is in contravention to the provisions of section 171(1) of the HGST Act, 2017 and has thus committed an offence as per the provisions of section 171 (3A) of the above Act. The allottee shall be at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter.

**(vii) Direct the respondent from charging administrative charges or additional FAC, either directly or through business park maintenance services or such other entities' appointed by the respondents to provide maintenance or other services.**

59. The complainants raised an issue regarding administrative charges. The demand raised in this regard has been challenged by the allottee(s) being illegal. This issue was also dealt in complaint bearing no. 4031 of





2019 titled as Varun Gupta V/s Emaar MGF Land Ltd. wherein the authority has held that a nominal amount of Rs. 15000/- could 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.

**H. Directions of the Authority:**

60. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent is directed to handover physical possession of the subject unit within 60 days from the date of this order as occupation certificate of the project has already been obtained by it from the competent authority.
- ii) The respondent is directed to pay interest at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 05.07.2013 till offer of possession of the booked unit i.e., 06.03.2020 after obtaining occupation certificate plus two months i.e., 06.05.2020 as per the proviso to section 18(1)(a) of the Act read with rules 15 of the rules.
- iii) The respondent is directed to pay arrears of interest accrued within 90 days from the date of order.
- iv) The complainants are also directed to pay the outstanding dues, if any after adjustment of delay possession charges.
- v) The rate of interest chargeable from the allottees 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

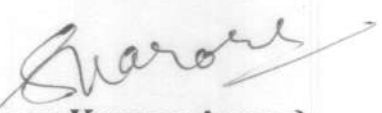


which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2 (za) of the Act.

vi) The respondent shall not charge anything from the complainants which is not part of the builder buyer agreement.

61. Complaint stands disposed of.

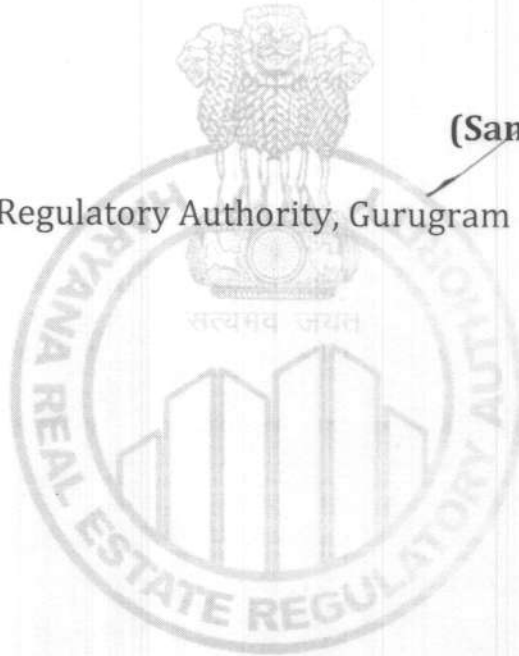
62. File be consigned to the registry.



**(Sanjeev Kumar Arora)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 24.11.2023**



**HARERA**  
**GURUGRAM**