

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

**Complaint no. :** 2224 of 2023  
**Complaint filed on:** 24.05.2023  
**Date of decision :** 11.01.2024

Ramesh Kumar Sharma  
R/o: - Flat No. PPD-181, DLF Park Place, DLF City,  
Phase- 5, Sector- 54, Gurugram - 122011

**Complainant**

**Versus**

M/s JMD Limited.  
**Regd. Office at:** 6, Devika, Tower, Upper Ground Floor,  
Nehru Place, New Delhi - 110019

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Nitin Jaspal (Advocate)  
Sh. Venket Rao and Gunjan Kumar (Advocates)

**Complainant  
Respondent**

**ORDER**

1. The present complaint has been filed by the complainant/allottee in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.



**A. Unit and project related details**

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

S. No.	Particulars	Details
1.	Name of the project	"JMD Megapolis", Sector 48, Gurugram
2.	Project area	IT Park
3.	Nature of the project	10.025 acres
4.	DTCP license no. and validity status	157 to 160 of 2007 dated 17.03.2007 Valid up to 16.03.2014
5.	Name of licensee	Atlantic Realtors Pvt. Ltd. and 3 others
6.	RERA Registered/ not registered	<b>Not registered</b>
7.	Unit no.	160, 1 <sup>st</sup> floor (Page 14 of complaint)
8.	Unit area admeasuring	2021 sq. ft. (super area) (Page 14 of complaint)
9.	Date of execution of apartment buyer's agreement in favor of the original allottee i.e., Rajiv Sales Corporation	28.04.2007 (Page 13 of complaint)
10.	Date of execution of sale agreement execute between the original allottee and the complainant	13.06.2014 (page no. 93 of reply)
11.	Date of endorsement	17.07.2014 (As per Annexure- 2, at page no. 37 of the complaint)
12.	Possession clause	<b>15</b> <i>That the possession of the said Unit is proposed to be delivered by the Company to the Unit Allettee within three years from the date of this Agreement. The Company shall not incur any liability if it is unable to deliver possession of the said Unit by the time aforementioned, if the completion</i>



		<p><i>of the I.T. Park/ Building(s) is delayed by reason of non-availability of steel and/or cement or other building materials, or water supply or electric power or slow down strike or due to a dispute with the construction agency employed by the Company, or non-payment of timely installments by Unit Allottee, civil commotion or by reason of war, or enemy action, or earthquake or any act of God, or if non-delivery of possession is as a result of any act, notice, order, rule or notification of the Government and/or any other public or competent authority or for any other reason beyond the control of the Company and in any of the aforesaid events, the Company shall be entitled to a reasonable extension of time for delivery of possession of the said Unit to the Unit Allottee(s). In the event of any such contingency arising/ happening, the Company shall have right to alter or vary the terms and conditions of allotment, or if the circumstances, beyond the control of the Company, so warrant, the Company may suspend the Project for such period as it may consider expedient and no compensation of any nature whatsoever can be claimed by the Unit Allottee for the period of suspension of the Project. If for the aforesaid or any other reason the Company is forced to abandon the whole or part of the Project, then and in such a case, the Company's liability shall be limited to refund of the amount paid by the Unit Allottee without any interest or any compensation whatsoever.</i></p>
13.	Due date of possession	28.04.2010 (Calculated as 3 years from date of execution of buyer's agreement i.e., 28.07.2007)



		(Note: -
14	Basic sale consideration	Rs.78,81,900 (As per BBA on page 14 of complaint)
15	Total sale consideration	Rs.1,22,69,838/- (As per statement of account dated 38 of the complaint)
16.	Amount paid by the complainant	Rs.1,20,85,134/- (As per statement of account dated 38 of the complaint)
17.	Occupation certificate	15.11.2013 (Page 65 of reply)
18.	Offer of Possession to the original allottee	03.04.2014 (Page 64 of reply)
19.	Completion certificate	16.12.2022 (Page 67 of reply)

**B. Facts of the complaint**

3. The complainant has pleaded the following facts: -

- I. That the complainant bought one unit in re sale from M/S Rajiv Sales Corporation in the project namely "**JMD MEGAPOLIS**" advertised as **world class IT park building with** best infrastructure, amenities and timely completion of the project etc. relying on the promise.
- II. That initially M/s Rajiv Sales Corporation had purchased the said unit in a project namely "**JMD MEGAPOLIS**" measuring 2021 sq. ft. and received the allotment letter of unit no. FF-106, First Floor, JMD MEGAPOLIS, Sector-48, Sohna Road, Gurugram, Haryana- 122018 by paying sum of Rs.22,25,000/-. Thereafter, on 28.04.2007, respondent executed a builder buyer agreement between the original allottee i.e., M/s Rajiv Sales Corporation.
- III. That later in July 2014 the said unit was bought by complainant, for a total sum of Rs.1,20,71,396/- was received by JMD Ltd. from M/s

Rajiv Sales Corporation after receiving total sale consideration from Mr. Ramesh Sharma. The same unit was transferred in name of complainant Sh. Ramesh Sharma on 17.07.2014.

- IV. That the total basic sale consideration in respect of the said unit is Rs.78,81,900/-. It is also worthy mentioning here that before signing and execution of the BBA the original allottee has already paid Rs.22,25,000/- to the respondent. That at the time of filing of present complaint, the complainant has paid the amount of Rs.1,20,85,134/- as demanded by the respondent periodically for the said unit, and the said amount is duly confirmed by the respondent as per the statement of account for the said unit dated 09.09.2019.
- V. That the builder took the advantage of the innocence of complainant and still at time of filing of this present complaint the said unit is not completed by the respondent. It is also worthy to mention here that as per the clause no. 15 of the BBA provides that, *"The possession of the said Unit is proposed to be delivered by the Company to the Unit Allottee within three years from the date of this Agreement"*. So, it is crystal clear that the respondent must have handed over the possession by 27.10.2010.
- VI. That on 03.08.2021, the respondent circulated the notice to the allottees to proceed to with registration of the sale deed of unit. In addition to this, it is quite notable here that said project is a totally fraudulent act to allottees because still the construction of said unit is not completed and builder claims to have the completion certificate.



The photo clips of the said unit crystal clearly showing 'Demonstrative evidence' that construction of the said unit is still pending. Thereafter, the builder starting charging maintenance charges to complainant which are totally against the law because the construction as promised was too completed by the builder and several additional demands for paying the maintenance were raised against the complainant. He always wanted to take the possession of the unit but builder kept asking for additional charges which were not part of builder buyer agreement.

- VII. That despite of the regular and timely payments made by the complainant, the respondent did not provide the possession as agreed in the buyer's agreement of the said unit till the filing of the present petition. In addition to this fact, it is pertinent to point out briefly that when the complainant asked for the possession of said unit, the respondent took the advantage of innocence of the complainant and demanded the penalty for the delay of maintenance from the complainant. That being aggrieved by the respondent, the complainant repeatedly requested the respondent that he has paid all the legitimate amounts to the respondent and he has no further obligation left in respect of the said unit. Moreover, the complainant has asked about completion of the construction work but receive no reply from it.
- VIII. That the complainant has been patient for several years, investing their hard-earned money in this project. However, in these several



years, he has experienced immense mental and physical distress due to the delay and harassment by the respondent. That in furtherance to the above-mentioned facts and circumstances, that the said project has not been completed yet despite issuance of the occupational certificate. Moreover, the said project falls under the jurisdiction and due to incompleteness of the project this Authority has entitlement to entertain the present complaint and pass an order in interest of justice.

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

4. The complainant has sought following relief(s).
  - I. To award the delayed possession charges to the complainant for every month of delay at prevailing rate of interest.
  - II. To waive off all maintenance charges.
  - III. To waive off all additional demands which are not part of buyer's agreement.
  - IV. To complete construction of the unit as per the standards of IT/Park building as described on the website and the buyer's agreement.
  - V. To handover possession of unit preferably within three months from the date of the order.
  - VI. To award compensation of Rs.5,00,000/- for mental agony and harassment.
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 contested the complaint on the following grounds: -

- a) That at the outset, it is relevant to state the respondent is a real estate company engaged in the business of the development and construction of the real estate projects and is one of the reputed companies in the real estate sector.
- b) That the unit bearing no. FF-160, admeasuring 2021 sq. ft. super area in the project "**JMD MEGAPOLIS**" was originally allotted to 'M/s Rajiv Sales Corporation' vide unit buyer's agreement dated 28.04.2007. The original allottee executed the buyer's agreement for the said unit after carefully reading and understanding the terms and conditions contained therein.
- c) Thereafter, the offer of possession of the unit in question was made to the original allottee vide Offer of Possession Letter dated 03.04.2014, by the respondent. However, the original allottee after receiving the offer of possession, not being financially able to pay the instalments due, decided to transfer/sell the unit. Accordingly, the original allottee transferred its rights, interests and liabilities pertaining to the unit to the present complainant by way of endorsement dated 13.06.2014.
- d) That the respondent seeks to raise the following objections /submissions, each of which has been taken in the alternative and is without prejudice to the other. Nothing contained in the preliminary objections/and in the reply on merits below may, unless otherwise specifically admitted, be deemed to be direct and tacit admission of any allegation made by the complainant in the complaint.





**Issue of maintainability of the present complaint:**

**i. Complaint is barred by law of limitation**

- That the present complaint is hopelessly barred by limitation. Without prejudice, the complainant has purposely slept over his rights and have chosen to file their complaint after a gross delay just with the intention to claim interest for an exorbitantly large period. The possession in the instant case was offered on 03.04.2014 and the unit was endorsed to the complainant on 13.06.2014. Therefore, the cause of action, if any, accrued on 03.04.2014 and 13.06.2014 itself. However, the present complaint has been filed only on 18.05.2023 (date of payment of statutory fee of complaint) i.e. approximately **9 years** after possession of the concerned unit had been offered to the complainant and the unit has been endorsed. Thus, the complainant has slept over their rights and have continued to default on their obligation to make due payments, execute the conveyance deed and take possession of their unit for more than 9 years. He has not even filed any application seeking condonation of delay and as such the present complaint merits dismissal on this ground alone. The present complaint has only been filed as an afterthought without any basis and with a malafide intent on behalf of the complainant to take undue advantage at the expense of the respondent and is liable to be dismissed being an abuse of the process of law.

**ii. Present complaint is not maintainable as completion certificate for the project in question has been issued by the competent authority.**

- That the present complaint is not maintainable before this Authority as the instant project is not an ongoing project. That the respondent had obtained the occupancy certificate for the instant project on 15.11.2013. Thereafter, an application for issuance of the completion certificate for the said project was preferred before the competent authority on 03.12.2013 which is way before the enactment of the Act, 2016. That the competent authority has granted the completion certificate for the instant project on 16.12.2022.
- That as per section 3 of the Act of 2016, which provides that all 'ongoing projects' that commence prior to the Act and in respect



of which a 'completion certificate' has not been issued are covered under the ambit of the Act, 2016. That the term "ongoing project has not been defined under the Act of 2016. The project question was not an ongoing project when the Act, 2016 came into existence thus, the instant project does not fall under the ambit of the Act, 2016.

**Issues pertaining to original allottee**

**i. The occupation certificate for the instant project was received in 2013 and possession of the unit in question was already offered to the original allottee.**

- That the respondent since the inception of the project was committed towards the timely completion. However, due to some force majeure situations beyond the control of the respondent, the construction of the project was hampered. That the respondent despite facing unforeseen force majeure situations completed the construction of the project and made an application for issuance of the occupation certificate before the competent authority and the same was granted on 15.11.2013.
- The post receipt of the occupation certificate dated 15.11.2013, the respondent being a responsible to developer/promoter had offered the possession of the unit vide offer of possession letter dated 03.04.2013.

**ii. Failure on the part of the original allottee to make timely payments of the outstanding dues despite receiving multiple demands/reminder letters.**

- That as per clause 7 (i) of the buyer's agreement the original allottee was obligated to make timely payments against the outstanding instalments. However, the original allottee defaulted in making the timely payments towards the total sale consideration of the unit in question.
- That the respondent being a responsible developer had regularly sent numerous demand/reminder letters to the original allottee to clear the outstanding dues against the unit in question. However, the original allottee despite receiving the



said demands/reminder letters deliberately choose not to pay the outstanding instalments.

**iii. Original allottee not being able to pay the dues and take possession of the unit, endorsed the unit in favor of the present complainant.**

- That as per clause 16 of the buyer's agreement, the possession of the Unit was to be delivered to the unit allottee(s) after receiving the occupancy certificate, provided all the outstanding dues are paid to the respondent. Clause 16 further provided that the unit allottee(s) shall take possession of the allotted unit within 30 days from the date of the offer of possession letter. The original allottee failed to perform its obligation under the said buyer's agreement as it neither paid the due instalments nor came forward to take possession of the allotted unit due to financial difficulty.

**Issue of offer of possession prior to endorsement**

**i. The complainant is a subsequent allottee and stepped into the shoes of the original allottee after the lapse of due date to the original allottee and offer of possession to the original allottee.**

- That the present complainant is a subsequent allottee of the unit in question. That the original allottee after receiving the offer of possession on 03.04.2014, entered into a sale agreement dated 13.06.2014 for transfer of allotment in favour of the present complainant and expressed their interest in transfer of allotment of the unit in favour of the present complainant. Adhering to the request of the original allottee and present complainant, the unit was endorsed in favour of the present complainant.
- That it was within the knowledge of the complainant that the due date of possession for handing over the unit to the original allottee, as per the buyer's agreement, had already expired and the offer of possession letter has already been received for the said unit on 03.04.2014.

**ii. Complainant is not entitled to delay possession charges because the unit in question was endorsed in favour of the complainant after offer of possession.**

- That at the time of endorsement, the unit was ready for occupation and the offer of possession letter was already transferred by the original allottee to the present complainant. Therefore, it was incumbent upon the present complainant to take physical possession of the unit. It is reiterated herein that after the endorsement the respondent being a responsible developer had sent multiple reminders/notices to the complainant to take possession of the unit, execute the conveyance deed and pay the outstanding dues. However, the complainant with a *malafide* intention of extracting illegitimate monetary benefit from the respondent preferred not to honor his part of the obligation.

**Defaults & violation of the Act of 2016, by the complainant**

**i. After the endorsement of the unit the present complainant failed to take physical possession of the unit in question and clear the outstanding dues.**

- That the present complainant at the time of endorsement was well aware that the offer of possession for the unit was already made on 03.04.2014, and that there were dues pending payment against the total sale consideration of the unit. He has being well aware of the offer of possession and outstanding dues against the unit, and of his own will and volition, got the unit transferred in his favour along with all the rights and liabilities including the obligation of making payments against the outstanding total sale consideration and performance of the terms and conditions of the buyer's agreement dated 28.04.2007 and at the time of endorsement there were amounts due to be paid against the sale consideration.
- That the complainant not only failed to clear the outstanding dues against the total sale consideration of the unit but has also failed to come forward to take possession of the unit in question. That the respondent being a responsible developer had sent multiple reminders/notices to the present complainant for taking the possession of the unit and clearing the outstanding dues. The outstanding dues against the sale consideration of the unit were paid by the complainant in the year 2019. That the

same has been admitted and acknowledged by the complainant in the account statement attached in his complaint.

**ii. Obligation to execute the conveyance deed of the unit by the complainant**

- That as per section 17 of the Act 2016, it is the duty of the promoter to execute the conveyance deed and hand over the physical possession to the allottee(s) within three months of obtaining the occupation certificate. However, in the present case, the possession of the unit was already offered to the original allottee on 03.04.2013 which was before the date of endorsement of the present complainant and the same was in the knowledge of the complainant. Despite complainant has failed to come forward and take possession and thereby execute the conveyance deed, the respondent in turn has not been able to fulfil its obligations as per section 17. Further, as per section 19(11) of the Act, 2016 it is an obligation upon the allottee(s) to execute the conveyance deed.
- He has miserably failed to take possession of the unit and duly execute the conveyance deed despite receiving multiple reminder letters.

**Construction complete in all respects thereby completion certificate granted by the competent authority.**

**i. Grant of occupation & completion certificate by and authorization by original allottee to lease out unit**

- That the respondent after completing the construction of the project made an application before the competent authority for issuance of occupation certificate. That the competent authority after completing all the inquiries with respect to the habitual condition of the project granted the occupation certificate on 15.11.2013. Thereafter, the respondent offered the possession of the unit to the original allottee *vide* offer of possession letter dated 03.04.2014. Since the instant unit was ready for occupation, the original allottee *vide* authorization letter dated 11.04.2014 authorized and requested the respondent to lease out the instant unit. That the completion certificate was also received on 16.12.2022.



ii. **Complainant himself has acknowledged that the unit has been constructed as agreed under the buyer's agreement, therefore, the complainant cannot allege that the project/unit is not complete.**

- That the present complainant himself on an Affidavit dated 13.06.2014, has sworn that he has visited/inspected the unit and that he is satisfied with the quality and standard of construction. The complainant has further acknowledged that the unit is constructed as detailed in the buyer's agreement. That the application for issuance of the completion certificate for the instant project was made on 03.12.2013, and the same was issued by the competent authority on 16.12.2022. That *vide* the said completion certificate the competent authority very categorically certified that the entire IT Colony developed over an area measuring 10.025 acres is operational/functional and complete as per the approved plans.

**Complainant liable to pay maintenance charges as per the agreed terms.**

- That as per clause 26, 27 and 28 of the buyer's agreement it was well within the knowledge of the complainant that he is liable to pay maintenance charges for the upkeep of the premises. In addition to the buyer's agreement, the complainant in an affidavit dated 13.06.2014 also, sworn to pay the maintenance charges.
- Since the unit in question has already been offered for possession *vide* offer of possession letter dated 03.04.2014 to the original allottee and the present complainant has got the unit endorsed in favour on 13.06.2014 i.e., after the offer of possession. Thereafter, he despite receiving multiple reminder letters from the respondent requesting him to take possession of the unit, failed to come forward for taking physical possession of the unit. Therefore, in the absence of the complainant, the respondent was constrained to maintain the unit of the complainant on his behalf. Thus, the complainant is liable to pay the maintenance charges from the date of endorsement i.e., 13.06.2014 till date.
- That an amount of Rs.90,42,376/- including interest stands due and payable against the outstanding maintenance charges which



have to be paid by the complainant. The present complaint has only been preferred by the complainant with the sole motive of evading the responsibility of paying the outstanding maintenance charges.

**Construction of the project was hampered due to reason beyond the control of the respondent.**

- That the construction of the project was hampered due to reasons beyond the control of the respondent. As per clause 15 of the buyer's agreement that the respondent shall not incur any liability if the reason for delay was beyond the control of the respondent or due to non-payment of timely instalments by unit allottee. Another reason contributing to the delay in the project, was due to non-payment of instalments by allottees. Several other allottees were in default of the agreed payment plan, and the payment of construction-linked instalments was delayed which resulted in badly impacting and delaying the implementations of the entire project.
- e) That for the submissions made and objections raised in the preliminary submissions and also for the reason that the respondent has already offered the possession on 03.04.2014, the grievance of the complainant is not maintainable and hence may be dismissed.
- 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 submissions made by the parties.
- 8. The complainant and respondent have filed the written submissions on 29.01.2024 and 20.02.2024 respectively which are taken on record. No additional facts apart from the complaint or reply have been stated the written submissions.

**E. Jurisdiction of the authority**



9. The authority has complete territorial jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

11. 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.*

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 complainant at a later stage.

**F. Objections raised by the respondent**

**F.1 Objections regarding that the respondent has grant of completion certificate of the project from the competent Authority.**

12. The respondent-promoter has raised the contention that the said project of the respondent is a pre-RERA project as the respondent has already obtained occupation certificate from the competent authority on 15.11.2013 i.e., before the coming into force of the Act and the rules made thereunder.
13. The authority is of the view that as per proviso to section 3 of Act of 2016, ongoing projects on the date of commencement of this Act i.e., 01.05.2017 and for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

*Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:*

14. The legislation is very clear in this aspect that a project shall be regarded as an "ongoing project" until receipt of completion certificate. Since, the completion certificate has been obtained by the promoter-builder on 16.12.2022 with regards to the concerned project i.e., after coming into force of the Act, the plea advanced by it is hereby rejected.



**F.II Objection regarding complaint is not maintainable as barred by limitation.**

15. That the complainant herein and the original allottee has entered into an agreement to sell on 13.06.2014, and the same was acknowledge by the respondent company through receipt dated 17.07.2014 and confirmed that the it has received an amount of Rs.1,20,71,396/- for the unit bearing no. FF-160, on 1<sup>st</sup> floor, for an area admeasuring 2021 sq. ft. in the project namely i.e., "JMD Megapolis" situated in Gurugram Haryana and the said amount has been transferred in the name and account of Mr. Ramesh Kumar Sharma. That the respondent has issued various reminder cum demand letters with regard to the complainant herein and requested to take the possession and clearing the outstanding dues on 01.80.2014, 13.02.2016, 14.03.2016, 20.04.2016, 15.06.2016, and also on 03.08.2021, and 07.10.2022, requesting to the complainant to registration of the sale deed/conveyance deed but the complainant has failed to comply the same. The Authority observes that the complainant herein and the respondent has continues conversion with regard to the subject unit and the respondent company itself issued a last letter for registration of the sale deed /conveyance deed on 07.10.2022. Thus, the contention of promoter that the complaint is not maintainable as barred by limitation also stands rejected.

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

**G. I. To award the delayed possession charges to the complainant for every month of delay at prevailing rate of interest.**

16. On consideration of the documents available on record and submissions made by both the parties, the unit in question was allotted to the



original allottee on 28.04.2007, and the complainant herein is subsequent allottee. The original allottee has booked the unit in the project namely "JMD Megapolis" situated in sector- 48 Gurugram being developed by the respondent/promoter. The original allottee was allotted a unit bearing no. FF-160, first floor and the buyer's agreement was executed between the original allottee and the respondent herein on 28.04.2007, vide which a unit bearing no. FF-160, admeasuring 2021 sq. ft. was allotted to it. The original allottee has paid an amount of Rs.22,25,000/- against the basic sale consideration of Rs.78,81,900/-. As per clause 15 of the agreement, the respondent was required to hand over possession of the unit within a period of 3 years from the date of this agreement. Therefore, the due date of possession comes out to be 28.04.2010.

17. The respondent submitted that occupation certificate of the project in question was obtained prior to enactment of the Act and the complaint is not maintainable. The respondent has obtained the occupation certificate in respect of the subject unit on 15.11.2013 and thereafter, has offered the possession on 03.04.2014 to the original allottee. Thereafter, the complainant herein and the original allottee has entered into an agreement to sell on 13.06.2014, and the same was acknowledge by the respondent company through receipt dated 17.07.2014 confirming that it has received an amount of Rs.1,20,71,396/- for the unit bearing no. FF-160, on 1<sup>st</sup> floor, for an area admeasuring 2021 sq. ft. in the project namely i.e., "JMD Megapolis" situated in Gurugram, Haryana and the said amount has been transferred in the name and



account of Mr. Ramesh Kumar Sharma. That the respondent has issued various reminder cum demand letters with regard to the complainant herein and requested to take the possession and clearing the outstanding dues on 01.80.2014, 13.02.2016, 14.03.2016, 20.04.2016, 15.06.2016, and also on 03.08.2021, and 07.10.2022, requesting to the complainant to registration of the sale deed/conveyance deed but the complainant has failed to comply the same.

18. The authority is of the view that the complainant herein is a subsequent allottee who had purchased the apartment from the previous allottee on 13.06.2014 i.e., at such a time when the possession of the subject unit was already offered to the original allottee. It simply means that the ready to move-in property was offered to the complainant and he was well aware about the fact that the construction of the tower where the subject unit is situated has already been completed and the possession of the same was offered to the original allottee on 03.04.2014 after issuance of the occupation certificate by the concerned authority. Moreover, he has not suffered any delay as the subsequent allottee-complainant herein came into picture only on 13.06.2014 i.e., after offer of possession which was made on 03.04.2014 to the original allottee. It is pertinent to mention here that the present allottee never suffered any delay and also respondent builder has sent various letters requesting him to take possession which are already on record. So, there is no equity in favour of the complainant. In the present case, the complainant intends to continue with the project and seeking delay possession charges at prescribed rate of interest on amount already paid by him as provided under the proviso to section 18(1) of the Act which 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."*

19. Hence, in such an eventuality and in the interest of natural justice, delay possession charges cannot be granted to the complainant as there is no infringement of any of his right (being subsequent allottee) by the respondent-promoter and neither allottee to whom possession was offered has been impleaded as a party. Therefore, no case is made out under the provisions of the Act of 2016.

20. In light of the facts mentioned above and documents placed on record the complainant herein who has become a subsequent allottee at such a later stage is not entitled to any delayed possession charges as he has not suffered any delay in the handing over of possession. Hence, the claim of the complainant w.r.t. delay possession charges is rejected being devoid of merits.

**G.II To waive off all maintenance charges.**

**G.III To waive off all additional demands which are not part of buyer's agreement.**

21. The respondent is entitled to charge maintenance charges as per terms and conditions of the buyer's agreement. In the present matter, the respondent had obtained the occupation certificate from the competent authority on 15.11.2013. As per statement of account issued by the maintenance agency namely M/s Visesa Maintenance Services Private Limited has demanding an amount of Rs.50,73,861/- (for a period of 01.03.2018 to 11.10.2023), as outstanding maintenance charges and



Rs.39,68,515/- towards interest for delay in making payment of the said amount. The Authority has gone through the buyer's agreement and as per clause 26 of the buyer's agreement the respondent is charging the interest @ 18% per annum for any delay in making payment. The agreement in the pre-RERA agreement and clauses of such buyer's agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the interest for delayed payments as held by Hon'ble Apex court in plethora of judgements. The promoter cannot be allowed to take undue advantage of his dominate position. Further, it is pertinent to mention here that 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—*

*(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;"*

22. Therefore, interest on the delay payments/maintenance dues 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 complainant in case of delayed possession charges. Thus, the



respondent can charge interest on the outstanding maintenance charges at the prescribed rate i.e., 10.85% from the complainant as prescribed under 2(za) of the Act of 2016. The respondent is further, directed not to charges any amount against holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

**G.IV To complete construction of the unit as per the standards of IT/Park building as described on the website and the buyer's agreement.**

23. In the present matter, the completion certificate of the project in which the subject unit is located has been received by the competent authority on 16.12.2022, which clearly means that the building is constructed as per the approved plans. Further, the complainant herein has failed to specify the defect or any other alteration and modification of the allotted unit of the complainant. Accordingly no such direction can be given by the authority.

**G.V To handover possession of unit preferably within three months from the date of the order.**

24. The respondent is under obligation to handover the possession of the allotted unit to the complainant complete in all aspects as per specifications of buyer's agreement on payment of outstanding dues if any. After consideration of the facts and circumstances, the authority is of view that as per section 19(6) and 19(7) of the Act every allottee shall be responsible to make necessary payments as per agreement for sale along with prescribed interest on outstanding payments from the



allottee and to take physical possession of the apartment as per section 19(10) of the Act. In view of the same, complainant/allottees shall make the requisite payments within a period of 2 months of the fresh demand raised by the respondent after revising the rate of interest to be levied on the maintenance dues as per the provisions of sections 19(6) and (7) of the Act. Thus, the complainant is directed to take physical possession of the subject unit within two months from the date of this order as the OC and CC in respect of the said project has already been obtained by it from the competent authority. Further, the complainant is directed to execute the conveyance deed upon payment of requisite stamp duty by them as per norms of the state government as per section 17 of the Act as per their obligation under section 19(11) of the Act with 3 months from the date of this order.

**H. Directions of the authority**

25. 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 complainant is not entitled to the relief of delay possession charges as he has not suffered any delay in handing over of possession.
- ii. The respondent is further directed to issue a fresh statement of account after revising the rate of interest to be levied on the maintenance dues as per the provisions of sections 19(6) and (7) of the Act and handover the physical possession of the subject unit



within two months from the date of this order as the occupation certificate and completion certificate in respect of the said project has already been obtained by it from the competent authority.

- iii. The complainant is directed to pay the outstanding amount if any, as per section 19(6) and 19(7) of the Act every allottee shall be responsible to make necessary payments as per agreement for sale along with prescribed interest on outstanding payments from the allottee and to take physical possession of the apartment as per section 19(10) of the Act.
  - iv. The rate of interest chargeable from the allottee by the promoter, in case of default in making payment 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 allottee, in case of default as per section 2(za) of the Act.
  - v. The respondent is not entitled to charge any amount against holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
26. Complaint stands disposed of.
27. File be consigned to registry.

Dated: 11.01.2024

V.1 -   
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram