

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

**Date of decision: 15.03.2024**

NAME OF THE BUILDER		M/s SHREE VARDHMAN INFRAHOME PRIVATE LIMITED	
PROJECT NAME		Shree Vardhman Flora, Gurugram, Haryana	
S. No.	Case No.	Case title	Appearance
1.	CR/4033/2021	Suresh Kumar Garg and anr. V/S Shree Vardhman Infrahome Pvt. Ltd	Shri Abhishek Garg (Advocate for the complainant) Shri Gaurav Rawat (Advocate for the respondent)
2.	CR/4061/2021	Suresh Kumar Garg and anr. V/S Shree Vardhman Infrahome Pvt. Ltd	Shri Abhishek Garg (Advocate for the complainant) Shri Gaurav Rawat (Advocate for the respondent)
3.	CR/4066/2021	Suresh Kumar Garg and anr. V/S Shree Vardhman Infrahome Pvt. Ltd	Shri Abhishek Garg (Advocate for the complainant) Shri Gaurav Rawat (Advocate for the respondent)
4.	CR/4067/2021	Rajesh Kumar Garg V/S Shree Vardhman Infrahome Pvt. Ltd	Shri Abhishek Garg (Advocate for the complainant) Shri Gaurav Rawat (Advocate for the respondent)

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**ORDER**

1. This order shall dispose of the aforesaid complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Shree Vardhman Flora, Gurugram, Haryana being developed by the same respondent/promoter i.e., M/S Shree Vardhman Infrahome Private Limited. The terms and conditions of the buyer's agreements and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	"Shree Vardhman Flora, Gurugram, Haryana"
<b>DTCP License No. and validity</b>	23 of 2008 dated 11.02.2008 valid up to 10.02.2025
<b>HRERA Registered</b>	Registered 88 of 2017 dated 23.08.2017 valid up to 30.06.2019

	<b>Registration expired</b>
<b>Date of commencement of construction</b>	14.05.2012 (Page 143 of reply)
<b>Possession Clause</b>	<p><b>Clause 14(a)</b></p> <p><i>The construction of the Flat is likely to be completed within a period of <b>thirty six(36) months of commencement of construction of the particular tower/block in which the Flat is located with a grace period of six(6) months, on receipt of sanction of the building plans/revised plans and all other approvals</b> subject to force majeure including any restrains/restrictions from construction agency/workforce and circumstances beyond the control of Company and subject to timely payments by the Buyer(s) in the said Complex. No claims by way of damages/compensation shall be against the Company in case of delay in handing over the possession on account of said reasons. For the purposes of this Agreement, the date of application for issuance of occupancy/completion/part completion certificate of the said Complex or the Flat shall be deemed to be the date of completion. The Company on completion of construction shall issue a final call notice to the Buyer(s), who shall remit all dues within thirty(30) days thereof and take possession of the Flat after execution of Sale Deed. If possession is not taken by the Buyer( s) within thirty(30) days of offer of possession, the Buyer(s) shall be deemed to have taken possession for the purposes of this Agreement and for the purposes of payment of the maintenance charges, taxes, property tax or any other tax imposable upon the Flat.</i></p>

<b>Due date of possession</b>	14.11.2015 (calculated from the date of excavation + 6 months of grace period)
<b>Occupation certificate</b>	02.02.2022

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA	Basic Consideration / Sale Total Amount paid by the complainant	Offer of possession
1.	CR/4033/2021  Suresh Kumar Garg Vs. Shree Vardhman Infrahome Pvt. Ltd  DOF: 19.10.2021  Reply: 24.02.2023	302, Tower no-B2 Super area- 1875sq.ft.	03.02.2012 ATS 10.01.2014	BSC- Rs. 44,90,625 /-  AP- Rs. 53,04,909/-	25.04.2022
2.	CR/4061/2021  Suresh Kumar Garg and anr. Vs. Shree Vardhman Infrahome Pvt. Ltd DOF: 19.10.2021  Reply: 24.02.2023	1103, Tower no-B3 Super area- 1875sq.ft. (As on page 45 of complaint)	Buyer agreement - 25.02.2012 (page 43 of complaint)	BSC- Rs. 44,90,625 /- (As on page 46 of complaint) AP- Rs. 60,52,416/- (As on page 67 of complaint)	11.04.2022 (As on page 52 of reply)
3.	CR/4066/2021  Suresh Kumar Garg and anr. Vs. Shree Vardhman Infrahome Pvt. Ltd DOF: 19.10.2021  Reply: 24.02.2023	1304, Tower no-B3 Super area- 1875sq.ft. (As on page 47 of complaint)	Buyer agreement - 25.02.2012 (As on page 45 of complaint)	BSC- Rs. 44,90,625 /- (As on page 48 of complaint) AP- Rs. 63,75,922/- (As on page 69 of complaint)	11.04.2022 (As on page 52 of reply)

4.	CR/4067/2021  Rajesh Kumar Garg Vs. Shree Vardhman Infrahome Pvt. Ltd DOF: 19.10.2021  Reply: 24.02.2023	802, Tower-B2  Super area- 1875sq.ft. (page 43 of complaint)	Buyer agreement - 03.02.2012 (page 41 of complaint)	<b>BSC-</b> Rs. 44,90,625 /- (As per buyer agreement at page 44 of complaint) <b>AP-</b> Rs. 61,98,209/- (As on page 65 on annexure-P3 of complaint)	07.02.2022 (As per page 51 of reply)
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**The complainants in the above complaints have sought the following reliefs:**

1. Direct the respondent to handover the possession and pay delay possession charges on the amount collected till date.
2. To supply to the complainants a revised account statement by adjusting the amount of delay possession charges at the prescribed rate due towards them.
3. Direct the respondent to not to charges anything from them which is illegal, arbitrary and which is not a part of agreement

**Note:** In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
ATS	Agreement to sell
DPC	Delayed possession charges
BSC	Basic sale consideration
AP	Amount paid by the allottee/s

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of subject unit for not handing over the possession by the due date, seeking the physical possession of the unit along with delayed possession charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/4033/2021 titled as Suresh Kumar Garg and anr. Vs. M/s Shree Vardhman Infrahome Pvt. Ltd** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

**A. Project and unit related details**

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

**CR/4033/2021 titled as Suresh Kumar Garg and anr. Vs. M/s Shree Vardhman Infrahome Pvt. Ltd**

S. N.	Particulars	Details
1.	Name of the project	"Shree Vardhman Flora.", Sector-90, Hayatpur, Gurugram.
2.	Nature of the project	Group housing colony
3.	RERA Registered/ not registered	Registered 88 of 2017 dated 23.08.2017
4.	Unit no.	302, Tower no-B2 (As on page 47 of complaint)
5.	Unit area admeasuring	1875sq.ft. (super-area) (As on page 47 of complaint)
6.	Date of execution of agreement (Note:-between original allottee and respondent)	03.02.2012 (As on page 45 of complaint)
7.	Agreement to sell (between original allottee	10.01.2014



	and the complainants)	(As on page 69 of complaint) 06.10.2015 (Page 75 of complaint - receipts were endorsed in favour of complainant no.1)
8.	Possession clause	<b>Clause 14(a)</b> <i>The construction of the Flat is likely to be completed within a period of <b>thirty six(36) months of commencement of construction of the particular tower/block in which the Flat is located with a grace period of six(6) months, on receipt of sanction of the building plans/revised plans and all other approvals</b> subject to force majeure including any restrains/restrictions from construction agency/workforce and circumstances beyond the control of Company and subject to timely payments by the Buyer(s) in the said Complex. No claims by way of damages/compensation shall be against the Company in case of delay in handing over the possession on account of said reasons. For the purposes of this Agreement, the date of application for issuance of occupancy/completion/part completion certificate of the said Complex or the Flat shall be deemed to be the date of completion. The Company on completion of construction shall issue a final call notice to the Buyer(s), who shall remit all dues within thirty(30) days thereof and take possession of the Flat after execution of Sale Deed. If possession is not taken by the Buyer( s) within thirty(30) days of offer of possession, the Buyer(s) shall be deemed to have taken possession for the purposes of this Agreement and for the purposes of payment of the maintenance charges, taxes, property tax or any other tax imposable upon the Flat.</i>
9.	Date of commencement of construction	<b>14.05.2012</b> <b>(Page 143 of reply)</b>
10.	Due date of possession	14.11.2015 [calculated 36 months from the date of

		commencement of construction + 6 months grace period)
11.	Offer of possession	25.04.2022 (As on page 53 of reply)
12.	Basic sale price	Rs.44,90,625 /- (As on page 48 of complaint)
13.	Amount paid by the complainant	Rs. 53,04,909/- (As on page 23 of complaint and page 55-56 of reply)
14.	Occupation certificate	02.02.2022 (As on page 44 of reply)

### B. Facts of the complaint

8. The complainants have made following submissions in the complaint:
9. That original allottees namely, Smt. Seema Maini and Sh. Atul Maini, had booked a residential apartment in the project and were allotted a unit bearing no. 302 in tower No. B-2 having an approximate area of 1875 square feet . The basic sale price of the flat was Rs. 44,90,625/- and the original allottees had further agreed to pay preferential location charges @ Rs. 50 per sq. ft., Rs. 75 per sq. ft for park facing and Rs. 75,000/- as club membership fee. The original allottees had also agreed to pay Rs. 2,00,000/- separately as car parking charges. That as per clause 14 (a) of the agreement, the construction of the flat was to be completed within a period of thirty-six (36) months from commencement of construction with a grace period of six (6) months. The period of 36 months from the date of execution of the builder buyer's agreement would end on 03.02.2015 and the grace period would expire on 03.08.2015. The original allottees had opted for construction linked payment plan wherein payments are made as



per the milestone reached during the construction of the tower. That in and around 2012-2014, they and their relatives were coming out of their joint family structure and were looking for flats in a single project when they came across the project being developed by respondent.

10. They identified the flat and came in touch with Sh. Nitin Tayal who had executed an agreement dated 10.01.2014 to purchase the flat with the original allottees. They were informed that the original allottees Ms. Seema Maini and Mr. Atul Maini had already made payments to the tune of Rs. 21,24,910/- to the respondent. Sh. Nitin Tayal also informed them that the project had commenced construction in May 2012 and was likely to be completed within the time stipulated within the agreement which fact was also affirmed by the respondent.
11. That, on 14.02.2014, the complainant No.1 executed an agreement with Sh. Nitin Tayal to purchase the flat and subsequently, on 06.10.2015, the agreement and the payment receipts were endorsed in the name of complainant No.1, who was also a proprietor of M/s JMC Investments. That subsequently on 10.04.2019, at the request of complainant No.1, the name of complainant No.2 was added as co-applicant pursuant to family arrangement since the flat No.302 came in their share.
12. That they have till date paid a sum of Rs. 53,04,910/- , however, despite making almost the entire payment for the flat, it has failed to deliver the flat to them. The project is incomplete so much so that at present there is no provision of proper water and sewerage there and the water for daily use is being supplied through water tankers. That they have already paid an amount of Rs. 53,04,910/-, till date with no sight of any possession or completion of project. The said amount is admitted in the **Annexure P-6** which is a letter issued by the respondent.

**C. Relief sought by the complainant**

13. The complainants have sought the following relief(s):
- I. Direct the respondent to refund the money paid along with interest as per prescribed rate from the date of payment till realization. But vide proceeding dated 01.08.2023, the counsel for the complainant stated that the offer has been made after obtaining OC on 02.02.2022 and hence, he stated at bar that he wishes to continue with the project and seeks possession of the unit along with delayed possession charges at the prescribed rate. Further the counsel for the respondent has no objection to this change of relief.
  - II. Direct the respondent to provide them a revised account statement by adjusting the amount of delay possession charges at the prescribed rate due towards them.
  - III. Direct the respondent to not to charges anything from them which is illegal, arbitrary and which is not a part of agreement.
14. 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**

15. The respondent has contested the complaint on the following grounds.
16. The present complaint filed under Section 31 of the Real Estate "RERA Act" is not maintainable under the said provision. The respondent has not violated any of the provisions of the Act. As per rule 28(1) (a) of RERA Rules, a complaint under section 31 of RERA Act can be filed for any alleged violation or contravention of the provisions of the RERA Act after such violation and/or contravention has been established after an enquiry made by the

Authority under Section 35 of RERA Act. In the present case, no violation/contravention has been established by the Authority under Section 35 of RERA Act and as such, the complaint is liable to be dismissed.

17. It is submitted that the Complainant Sh. Suresh Kumar Garg, his brothers Sh. Rajesh Kumar Garg and Sh. Naresh Kumar Garg are engaged in the business of Real Estate Broking under the name and style of "**JMC Investments**" and "**Anchal Estate**". They booked multiple flats in the project in question as well as in other projects of Shree Vardhman Group for the purpose of selling those booking further. Many bookings have already been sold by them. As per the records of the OP company, the following allotments/bookings are still standing in their or their family Members' names.
18. The complainant has sought relief under section 18 of the RERA Act, but the said section is not applicable in the facts of the present case and as such, the complaint deserves to be dismissed. It is submitted that the operation of Section 18 is not retrospective in nature and the same cannot be applied to the transactions which were entered prior to the RERA Act came into force. The complaint as such cannot be adjudicated under the provisions of RERA Act.
19. That the expression "agreement to sell" occurring in Section 18(1)(a) of the RERA Act covers within its folds only those agreements to sell that have been executed after RERA Act came into force and the FBA executed in the present case is not covered under the said expression and the same having been executed prior to the date the Act came into force. It is submitted without prejudice to above objection that in case of agreement to sell executed prior to RERA coming into force, the dates for delivery of possession committed therein cannot be taken as trigger point for invocation of Section 18 of the Act. When the parties executed such agreements, section 18 was not in

picture and as such the drastic consequences provided under section 18 cannot be applied in the event of breach of committed date for possession given in such agreements. On this ground also, the present complaint is not maintainable

20. That the FBA executed in the present case did not provide any definite date or time frame for handing over of possession of the flat to the complainant and on this ground alone, the refund and/or compensation and/or interest cannot be sought under RERA Act. Even clause 14 (a) of the FBA merely provided a tentative/estimated period for completion of construction of the flat and filing of application for occupancy certificate with the concerned Authority. After completion of construction, the respondent was to make an application for grant of occupation certificate (OC) and after obtaining the OC, the possession of the flat was to be handed over.
21. The relief sought by the complainant is in direct conflict with the terms and conditions of the FBA and on this ground alone, the complaint deserves to be dismissed. The complainant cannot be allowed to seek any relief which is in conflict with the said terms and conditions of the FBA. It is submitted that delivery of possession by a specified date was not essence of the FBA, and the complainant was aware that the delay in completion of construction beyond the tentative time given in the contract was possible. Even the FBA contain provisions for grant of compensation in the event of delay. As such, it is submitted without prejudice that the alleged delay on part of respondent in delivery of possession, even if assumed to have occurred, cannot entitle the complainant to ignore the agreed contractual terms and to seek interest /compensation on any other basis. It is submitted without prejudice that the alleged delay in delivery of possession, even if assumed to have occurred, cannot entitle the complaint to rescind the FBA under the contractual terms

or in law. The delivery of possession by a specified date was not essence of the FBA and the complainant was aware that the delay in completion of construction beyond the tentative time given in the contract was possible. It is submitted that issue of grant of interest/compensation for the loss occasioned due to breach committed by one party of the contract is squarely governed by the provisions of section 73 and 74 of the Contract Act, 1872 and no compensation can be granted de-hors the said sections on any ground whatsoever. A combined reading of the said sections makes it amply clear that if the compensation is provided in the contract itself, then the party complaining the breach is entitled to recover from the defaulting party only a reasonable compensation not exceeding the compensation prescribed in the contract and that too upon proving the actual loss and injury due to such breach/default. On this ground, the compensation, if at all to be granted to the complainant, cannot exceed the compensation provided in the contract itself. The complaint is not in the prescribed format and is liable to be dismissed on this ground alone.

22. It will be worthwhile to mention here that every responsible person/institution in the country has responded appropriately to overcome the challenges thrown by COVID - 19 pandemic and have Suo-Moto extended timelines for various compliances. The Hon'ble Supreme Court of India has extended all timelines of limitations for court proceedings with effect from 15/03/2020 till further order; the Hon'ble NCDRC has also extended the timelines on the similar lines; RERA authorities also have extended time periods given at the time of registration for completion of the project; even income tax department, banking and financial institutions have also extended timelines for various compliances.

23. Copies of all the relevant documents have been duly 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.

#### **E. Jurisdiction of the authority**

24. 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**

25. 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**

26. 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**

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**(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.*

27. 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. Findings on the objections raised by the respondent.**

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

28. The contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation or rights of the parties inter-se in accordance with the apartment buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the act or the said rules has been executed inter se parties. The authority is of the view that the act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the act. Therefore, the provisions of the act, rules and agreement have to be read and interpreted harmoniously. However, if the act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the act and the rules after the date of coming into force of the act and the rules. Numerous provisions of the act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)* decided on 06.12.2017 and which provides as under:

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

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

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

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

30. The agreements are sacrosanct save and except for the provisions which have been abrogated by the act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the



agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

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

**G.I Direct the respondent handover the possession and to pay delayed possession interest on the amount paid by the allottee at the prescribed rate as per the proviso to section 18(1) of the Act.**

**G.II Direct the respondent to provide them a revised account statement by adjusting the amount of delay possession charges at the prescribed rate due towards them.**

**G.III. Direct the respondent to not to charges anything from them which is illegal, arbitrary and which is not a part of agreement.**

31. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

32. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges at prescribed rate of interest on amount already paid by her 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."*

33. Clause 14(a) of the apartment buyer's agreement (in short, the agreement) dated 03.02.2012, provides for handing over possession and the same is reproduced below:

14(a).

*The construction of the Flat is likely to be completed **within a period of thirty six(36) months of commencement of construction of the particular tower/block in which the Flat is located with a grace period of six(6) months, on receipt of sanction of the building plans/revised plans** and all other approvals subject to force majeure including any restrains/restrictions from construction agency/workforce and circumstances beyond the control of Company and subject to timely payments by the Buyer(s) in the said Complex. No claims by way of damages/compensation shall be against the Company in case of delay in handing over the possession on account of said reasons. For the purposes of this Agreement, the date of application for issuance of occupancy/completion/part completion certificate of the said Complex or the Flat shall be deemed to be the date of completion. The Company on completion of construction shall issue a final call notice to the Buyer(s), who shall remit all dues within thirty(30) days thereof and take possession of the Flat after execution of Sale Deed. If possession is not taken by the Buyer( s) within thirty(30) days of offer of possession, the Buyer(s) shall be deemed to have taken possession for the purposes of this Agreement and for the purposes of payment of the maintenance charges, taxes, property tax or any other tax imposable upon the Flat.*

34. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment time period 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 allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.

**35. Due date of handing over possession:** As per clause 14(a) of buyer's agreement, the respondent promoter has proposed to handover the possession of the subject unit within a period of thirty-six months with grace period of six months from the date of start of construction of the particular tower. Therefore, the due date of handing over possession comes out to be 14.11.2015.

**36. Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) 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**  
*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.*

**37.** The legislature in its wisdom in the subordinate legislation under the 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.
38. 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., 15.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
39. The definition of term 'interest' as defined under section 2(za) 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—*
- 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;"*
40. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
41. 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 clause 14(a) of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of thirty-six months with a grace period of six months. As such the due date of handing over of possession comes out to be 14.11.2015. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the agreement dated 03.02.2012 executed between the parties. It is pertinent to mention over here that the offer of possession has been made after a delay of many years. Further, it is observed that offer of possession has been made on 25.04.2022 after a delay of more than 7 years.

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 allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 14.11.2015 till offer of possession(25.04.2022) plus two months i.e., 25.06.2022 as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

42. In the lead case i.e., 4033/2021, the said unit was endorsed in the favour of the complainant in October 2015 i.e., before the due date of handing over of the possession of the unit. As decided in complainant no. 4031 of 2019 titled as *Varun Gupta Vs. Emaar MGF Land Limited*, the authority is of the considered view that in cases where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over

possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession.

43. Separate proceeding to be initiated by the planning branch of the Authority for taking an appropriate action against the builder as the registration of the project has been expired

#### **H. Directions of the authority**

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

- i. The respondent is directed to pay as per proviso to section 18(1) of the Act read with rule 15 of the rules to each of the complainants delayed possession charges at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay on the amount paid by the complainants to the respondent from the due date of possession 14.11.2015 till offer of possession plus two months i.e., 25.06.2022 and issue fresh statement of account after adjustment of the amount of DPC up to 25.06.2022.
- ii. The arrears of such interest accrued from due date of possession of each case till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent is directed to handover the possession of the allotted unit within 30 days of this order. On the other hand, the complainant is

- also directed to take the possession inconsonance of section 19(10) of Act.
- v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, 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 complainant which is not the part of the buyer's agreement.
45. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
46. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
47. Files be consigned to registry.

**Dated: 15.03.2024**

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory  
Authority, Gurugram