

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

Complaint no. : 2593 of 2023
Date of filing : 08.06.2023
Order pronounced on: 03.04.2024

1. Shailesh Patel

2. Jyoti Rohra

**Both R/O: - D-1501, Bestech Park View SPA, Sector-47,
Gurgaon, Haryana- 12200**

Complainants

Versus

Sepset Properties Pvt. Ltd.

**Regd. Office at: - Room No. 205, Welcome Plaza, S-551,
School Block- II, Shakarpur, New Delhi- 110092**

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Sukhbir Yadav

Shri Himanshu Singh

Counsel for the Complainants

Counsel for the Respondent

ORDER

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

A. Unit and project related details

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

S.No.	Particulars	Details
1.	Name of the project	"Paras Dews", Sector- 106, Gurugram
2.	Nature of project	Group Housing Colony
3.	RERA registered/not registered	Registered 118 of 2017 dated 28.08.2017
4.	DTPC License no.	61 of 2012 dated 13.06.2012
	Validity status	12.06.2020
	Name of licensee	Sepset Properties
	Licensed area	13.76 acre
5.	Unit no.	04, Tower-F, 2 nd floor, (Page no. 52 of complaint)
6.	Unit measuring	1385 sq. ft. (Page no. 52 of complaint)
7.	Date of execution of Floor buyer's agreement	25.04.2013 (Page no. 49 of complaint and page no. 33 of reply)
8.	Possession clause	3. Possession <i>"3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller 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, whether under this</i>

		<p><i>Agreement or otherwise, from time to time, the Seller proposes to hand over the possession of the Apartment to the Purchaser(s) within a period of 42 (Forty-Two) months with an additional grace period of 6 (six) Months from the date of execution of this Agreement or date of obtaining all licenses or approvals for commencement of construction, whichever is later, subject to Force Majeure. The Purchaser(s) agrees and understands that the Seller shall be entitled to a grace period of 90 (ninety) business days, after the expiry of grace period, for offer to hand over the possession of the Apartment to the Purchaser....."</i></p> <p style="text-align: right;">(Emphasis supplied)</p>
9	Environment clearance	06.09.2013 (Page no. 22 of reply)
10	Due date of possession	06.09.2017 (Calculated from the date of environment clearance i.e. 06.09.2013 being later including grace period) (Grace period of six months is allowed being unqualified and unconditional) *Note- The due date of possession has been inadvertently mentioned as 25.04.2017 in proceedings dated 07.02.2024.
11.	Basic Sale Price	Rs. 83,10,000/- (Page no. 82 of complaint)
12.	Total sale consideration	Rs.99,11,075/- (Page no. 82 of complaint and page no. 25 of reply)
13.	Total amount paid by the complainant	Rs.90,60,716/- (SOA dated 28.04.2023 at page 107 of complaint)
14.	Occupation certificate dated	26.04.2023 (Page no. 19 of reply)

15.	Offer of possession	28.04.2023 (Page no. 69 of reply)
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B. Facts of the complaint

3. The complainant has made the following submissions: -

- a) That the complainants booked a 2 BHK residential apartment No. T-F/0204, 2nd floor in "Paras Dew's" at Sector - 106, Gurugram on 31.10.2012, relying on the claims and projections of the respondent. The complainants paid the booking amount of Rs.7,50,000/- through five different cheques on 29.12.2012. The subject apartment was purchased under construction link payment plan for a total sale consideration of Rs.99,11,075/-. An allotment letter dated 10.01.2013 was issued in favor of the complainants for the subject unit admeasuring area of 1385 sq. ft. at a basic sale price of Rs.6000/- per sq. ft. Subsequently, on 10.04.2013, a total payment of Rs.10,07,000/- was made by the complainants.
- b) Thereafter, on 25.04.2013, a pre-printed, arbitrary builder buyer agreement was executed between the parties. As per clause no. 3.1 of the buyer's agreement, the respondent was to hand over possession of the apartment within 42 months with an additional-grace period of 6 months from the date of execution of the agreement or date of obtaining all license or approvals for commencement of construction, whichever is later. The due date of possession was 06.09.2017. Further, payments were made on 20.07.2013 amounting to Rs.8,79,876/-.
- c) That the complainants availed a home loan of Rs.55,00,000/- from ICICI Bank on 23.07.2013, and the respondent issued permission to mortgage on 31.07.2015.
- d) That the complainants paid the demands as and when demanded by the respondent, the complainants disbursed a sum of Rs.18,68,347/- to the

respondent and are paying interest on the said disbursed amount as per the loan account statement dated 26.05.2023. Between 07.01.2017 to 10.01.2017, a further payment of Rs.10,21,437/- was also made.

- e) That the occupancy certificate for the part project (for tower E and F) was obtained by the respondent on 26.04.2023. That the respondent sent an offer of possession letter dated 28.04.2023, asking for extra charges under different heads i.e., Rs. 1,84,675/- for external electrification charges, electricity connection charges, FTTH infrastructure charges, intercom charges, water connection charges, sewerage connection charges, labour cess amounting to Rs. 31,855/- and two year advance maintenance charges amounting to Rs. 1,58,408/- and further threatening the complainants of holding charges if possession is not taken within 30 days from the date of the notice of offer of possession.
- f) That as per the statement of account dated 28.04.2023, sent by the respondent along with the offer of possession, Rs.90,60,716/- has been paid by the complainants towards the total sale consideration of Rs.99,11,075/-, almost 91% of the total sale consideration. Till today, the respondent has not handed over the physical possession of the unit to the complainants and has refrained the complainants from enjoying the benefit of their unit. The demand for holding charges is deemed illegal and arbitrary.
- g) That the main grievance of the complainants in the present complaint is despite having paid more than 91% of the actual cost of the flat, the respondent has not handed over the physical possession of the flat and has not paid the credit balance. Herein, the complainants do not want to withdraw from the project.
- h) That the complainants do not wish to withdraw from the project however, the promoter has not fulfilled its obligation under Section 18(1) of the Act,

wherein the promoter is obligated to pay the interest at the prescribed rate for every month of delay till the handing over of the possession.

C. Relief sought by the complainants.

4. The complainants have sought following relief:
 - i. Direct the respondent to pay delayed possession charges from the due date of possession till actual possession of the flat.
 - ii. Direct the respondent to handover physical possession of the flat with all amenities under Section 19(3) of the Act.
 - iii. Direct the respondent not to charge labour cess.
 - iv. Direct the respondent not to charge one time additional charges.
 - v. Direct the respondent not to charge two years advance maintenance charges till actual physical handover of the flat.
 - vi. Direct the respondent not to levy holding charges.
 - vii. Direct the respondent not to charge interest.
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 the complainants approached the authority for redressal of the alleged grievances with unclean hands, i.e., by not disclosing material facts pertaining to the case and by distorting and misrepresenting the actual factual situation with regard to several aspects. The complainants are not consumer and had purchased the subject unit for the purpose of investment. Further, they have not been successful in selling the subject

- unit at a premium rate in the market and have filed the present complaint to avoid outstanding dues against the subject unit.
- b) That the respondent has obtained the occupation certificate from the competent authority on 26.04.2023 and thereafter, offer of possession of the unit was also made to the complainants on 28.04.2023.
- c) That the builder buyer agreement dated 25.04.2013 was executed between the parties and unit bearing no. 04, 2nd floor in tower F, having super area admeasuring 1385 sq. ft., type 2BHK for the basic sale consideration of Rs. 99,11,075/- was allotted to the complainants. The complainants have opted for construction linked payment plan. Thereafter, the complainants have availed the home loan with the financial institution namely, i.e., ICICI Bank Limited vide application dated 23.07.2013.
- d) That the possession of the subject unit was to be handed over to the complainants in terms of clauses 3.1 and 3.2 of the builder buyer agreement dated 30.05.2013 which clearly provide that subject to the complainant complying with all the terms of the builder buyer agreement and making timely payments of the instalments as and when they fall due. The respondent proposed to offer the possession of the unit within a period of 51 months (42 month + grace period of 6 month plus 90 days) of the date of execution of the apartment buyer's agreement or date of obtaining all licences or approvals for commencement of construction, whichever is later, subject to force majeure. Moreover, all the approvals for commencement of the construction work were received towards the end of 2013 and construction work commenced in January 2014.
- e) That the present complaint is not maintainable since not only the complainant in breach of the builder buyer agreement, and also in violation of Real Estate Regulation Act, 2016 and the Haryana Real Estate

(Regulation and Development) Rules, 2017 has filed this complaint. Section 19 lays down the rights and duties of the allottees and sub-clause (6) of Section 19 provides that the allottee shall be responsible to make payments in the manner and as per the time specified in the agreement between the parties. The complainants have breached all these provisions by making a huge delay in making the payments as per the time specified in the agreement.

- f) That the respondent issued various demand letters and reminder letters to the present complainant thereafter they paid an amount of Rs. 90,60,716/- out of total sale consideration of Rs. 1,08,38,787/-. That the complainants made the last payment in 2017 and an amount of Rs. 18,39,408/- (interest of Rs. 2,12,841/- included) is pending as per the agreed payment plan.
- g) That the respondent has suffered due to the breaches committed by the complainants since the said respondent has continued with the construction of the apartment despite the complainants not paying the complete consideration. Due to the failure of the complainants in paying the complete consideration, the respondent has suffered immense monetary hardship.
- h) That the Hon'ble Supreme Court, through an order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi-NCR region, affecting the respondent's project which led to a significant reduction in construction activity for a considerable period. Similar stay orders were also issued in the preceding years, 2017-2018 and 2018-2019, resulting in long-term halts in construction activities. The pandemic of Covid-19 also had devastating effect on the worldwide economy, particularly on the industrial sector, including the real estate sector, which is heavily dependent on its labour force. Government-imposed lockdowns resulted

in a complete stoppage of all construction activities in the NCR area until July 2020. The labour force employed by the respondent was forced to return to their hometowns, leading to a severe shortage of labour. The respondent has been unable to employ the necessary labour for the completion of the project.

7. All other averments made in the complaint were denied in toto.
8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

9. 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

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)(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.

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Finding on objections raised by the respondent

F.I. Objection regarding the complainants being investors.

13. The respondent has taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondents also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondents are correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

14. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

F.I. Objection regarding the force majeure.

15. The respondent-promoter raised the contention that, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region and the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period and other similar orders during the winter period 2017-2019. A complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned labours left the site and they went to their native villages and look out for work in other states, the resumption of work at site becomes a slow process and a steady pace of construction realized after long period of it. It is pertinent to mention here that flat buyer's agreement was executed between the parties on 25.04.2013 and as per the terms and conditions of the said agreement the due date of handing over of possession comes 06.09.2017 which is way before the abovementioned orders. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

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

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

17. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 06.09.2017. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to pay delayed possession charges from the due date of possession till actual possession of the flat.

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

"Section 18: - Return of amount and compensation

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

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

(Emphasis supplied)

19. Clause 3.1 of the apartment buyer agreement provides for handing over of possession and is reproduced below:

"3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller 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, whether under this Agreement or otherwise, from time to time, the Seller proposes to hand over the possession of the Apartment to the Purchaser(s) within a period of 42 (Forty-Two) months with an additional grace period of 6 (six) Months from the date of execution of this Agreement or date of obtaining all licenses or approvals. The commencement of construction, whichever is later, subject to Force Majeure. The Purchaser(s) agrees and understands that the Seller shall be entitled to a grace period of 90 (ninety) business days, after the expiry of grace period, for offer to hand over the possession of the Apartment to the Purchaser....."

(Emphasis supplied)

20. **Admissibility of delay possession charges at prescribed rate of interest:-** The complainant is seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may

be prescribed and it has been prescribed under Rule 15 of the Rules, *ibid*. 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."

21. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* 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.
22. 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., 03.04.2024 is @ 8.85 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
23. 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;"

24. Therefore, interest on the delay payments from the complainants 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.
25. 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 provisions of the Act. By virtue of buyer's agreement executed between the parties, the possession of the booked unit was to be delivered within 42 months with an additional grace period of 6 months from the date of execution of the agreement (25.04.2013) or date of obtaining all license or approvals for commencement of construction, whichever is later. The builder buyer agreement was executed between the parties on 25.04.2013 whereas the environmental clearance certificate was obtained by the respondent on 06.09.2013. Therefore, the date of environmental clearance being later, the due date of possession was calculated from the date of environmental clearance. Accordingly, the due date of possession comes out to be 06.09.2017. Occupation certificate was granted by the concerned authority on 26.04.2023 and thereafter, the possession of the subject flat was offered to the complainants on 28.04.2023. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and there is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 25.04.2013 to hand over the possession within the stipulated period.

26. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 26.04.2023. The respondent offered the possession of the unit in question to the complainants only on 28.04.2023, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 month of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (28.04.2023) which comes out to be 28.06.2023.

G.II Direct the respondent to handover physical possession of the flat with all amenities under Section 19(3) of the Act.

27. The respondent has obtained the occupation certificate from the competent authority on 26.04.2023 and offered the possession of the allotted unit vide letter dated 28.04.2023. As per Section 19(10) of Act of 2016, the allottees are under an obligation to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. The complainants are directed to take the possession of the allotted unit after making payment of outstanding dues, if any within a period of 2 months.
28. The respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement entered into between the parties.

G.III Direct the respondent not to charge labour cess.

29. Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.09.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled as "**Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited**" wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainants is completely arbitrary and the complainants cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

G.IV Direct the respondent not to charge one time additional charges.

30. The respondent sent an offer of possession letter dated 28.04.2023, asking for one time additional charges amounting to Rs. 1,84,675/- for external electrification charges, electricity connection charges, FTTH infrastructure charges, intercom charges, water connection charges and sewerage connection charges.

31. As far as external electrification charges are concerned, the respondent cannot collect the same from the allottees while issuing offer of possession letter of a unit even though there is any provision in the builder buyer's agreement to the contrary as has already been laid down in complaint bearing no. 4031 of 2019 titled as "**Varun Gupta Vs. Emaar MGF Land Limited**" decided on 12.08.2021.

32. However, in case of electricity connection charges, water connection charges, telecom charges and sewerage connection charges, FTTH infrastructure charges, there is no doubt that all these charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and release of such connections in the name of the allottee and are payable by the allottee. Moreover, this issue too has already been dealt with by the authority in complaint bearing no. 4031 of 2019 titled as "*Varun Gupta Vs. Emaar MGF Land Limited*" decided on 12.08.2021, wherein it was held that these connections are applied on behalf of the allottee and allottee has to make payment to the concerned department on actual basis. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the abovesaid connections including security deposit provided to the units, then the promoters will be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant viz- à-viz the total area of the particular project. The complainant/allottee will also be entitled to get proof of all such payment to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.

G.V Direct the respondent not to charge two years advance maintenance charges till actual physical handover of the flat.

33. Advance maintenance charges accounts for the maintenance charges that builder incurs while maintaining the project before the liability gets shifted to the association of owners. Builders generally demand advance maintenance charges for 6 months to 2 years in one go on the pretext that regular follow up with owners is not feasible and practical in case of ongoing projects wherein OC has been granted but CC is still pending.

34. This issue has already been dealt with by the authority in complaint bearing no. 4031 of 2019 titled as "*Varun Gupta Vs. Emaar MGF Land Limited*" decided on 12.08.2021, wherein it was held that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottees even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

G.VI Direct the respondent not to levy holding charges.

35. The term holding charges or also synonymously referred to as non-occupancy charges become payable or applicable to be paid if the possession has been offered by the builder to the owner/allottee and physical possession of the unit not taken over by allottee, but the flat/unit is lying vacant even when it is in a ready-to-move condition. Therefore, it can be inferred that holding charges is something which an allottee has to pay for his own unit for which he has already paid the consideration just because he has not physically occupied or moved in the said unit.

36. In the case of *Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021*, the Hon'ble Authority had already decided that the respondent is not entitled to claim holding charges from the complainants at any point of time even after being part of the builder buyer agreement as per law settled by the *Hon'ble Supreme Court in Civil Appeal nos. 3864-3899/2020 decided on 14.12.2020*. The relevant part of same is reiterated as under-

37. "134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the **holding** charges will not be payable to the developer. Even in a case where the possession has been

delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."

38. Therefore, in view of the above the respondent is directed not to levy any holding charges upon the complainants.

G.VII Direct the respondent not to charge interest.

39. The complainants are praying by virtue of the said relief that no interest be charged upon them in lieu of the outstanding payment with respect to the subject unit in question.

40. The complainants on the one hand are claiming the relief of delayed possession charges and on the other hand seeking intervention of this authority to evade interest charged upon them in lieu of the outstanding payment with respect to the subject unit in question. However, the Authority emphasizes the importance of maintaining balance and fairness in resolving disputes. Therefore, the respondent is entitled to charge interest on outstanding payment however, the rate of interest chargeable from the complainants by the respondent, in case of default shall be charged at the prescribed rate i.e., 10.85%, which is the same rate of interest which the respondent shall be liable to pay the complainants in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

H. Directions of the Authority

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

I. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of a delay from the due date of possession, i.e., 06.09.2017 till the

date of offer of possession (28.04.2023) plus two months i.e., 28.06.2023, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.

- II. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% 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.
- III. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant are directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.
- IV. The respondent is directed to handover the physical possession of the allotted unit to the complainants with completion in all aspects of buyer's agreement.
- V. The respondent is not entitled to charge labour cess as it is the respondent builder who is solely responsible for the disbursement of said amount.
- VI. The respondent would be entitled to recover the actual charges paid to the concerned departments' from the complainant/allottee on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to complainants vis-à-vis the area of all the flats in this particular project. The complainant would also be entitled to proof of such payments to the

concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads.

VII. The respondent cannot charge electrification charges from the allottees while issuing offer of possession letter of a unit even though there is any provision in the builder buyer's agreement to the contrary.

VIII. The respondent shall not demand the advance maintenance charges for more than one year from the allottees even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

IX. The respondent is not entitled to claim holding charges from the complainants/allottees at any point of time even after being part of the builder buyer agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided in 14.12.2020.


X. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

42. Complaint stands disposed of.

43. File be consigned to registry.

HARERA
GURUGRAM

Dated: 03.04.2024


(Ashok Sangwan)
Member

Haryana Real Estate
Regulatory Authority,
Gurugram