

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

**Complaint no.** : 3611/2023  
**Date of filing complaint :** 03.08.2023  
**First date of hearing :** 29.11.2023  
**Date of decision :** 10.04.2024

1. Rajan Deep Vij
2. Nilesh Aggarwal
3. Sunil Kumar Singh

**Residents of:** - D-402, Plumeria Garden  
Estate, Sector-Omicron-3, Greater Noida-  
201310, Uttar Pradesh

**Complainants**

Versus

M/s Shine Buildcon Private Limited  
**Registered office:** H-334, Ground Floor,  
New Rajinder Nagar, New Delhi  
**Corporate office:** Plot No. 281, Udyog  
Vihar, Phase-II, Gurugram

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Ms. Priyanka Aggarwal (Advocate)  
Mr. Manu Jain and Mr. Nishant Jain (Advocates)

Complainants

Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee 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

provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project-related details**

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

Sr. No.	Particulars	Details
1.	Name of the project	"70 Grandwalk", Sector 70, Gurugram
2.	Project area	2,893 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	34 of 2012 dated 15.04.2012 valid upto 14.04.2020
5.	Name of licensee	Shine Buildcon
6.	RERA Registered/ not registered	28 of 2017 dated 28.07.2017 valid upto 30.06.2022
7.	Unit no.	D-028, Ground Floor (Page no. 59 of complaint)
8.	Unit area admeasuring	354 Sq. Ft. (Super Area) (Page no. 59 of complaint)
9.	Date of allotment	20.01.2015 (Page no. 23 of complaint)
10.	Date of execution of BBA	15.07.2015 (Page no. 57 of complaint)
11.	Possession clause	Clause 13. POSSESSION AND HOLDING CHARGES <i>"(ii) subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company</i>



		<p><i>proposes to offer the possession of the said Shop to the Allottee within a period of 42 months from the date of signing of this agreement or approval of the Building plans, whichever is later. The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (six month) ("Grace period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company."</i></p> <p>[Emphasis supplied]</p> <p>(As per BBA at page no. 80 of complaint)</p>
12.	Due date of possession	15.07.2019 (Calculated to be 42 months from the date of execution of BBA + Grace period of 6 months being unqualified and unconditional)
13.	Basic Sale Price	Rs. 36,28,500/- (As per BBA at page no. 66 of complaint)
14.	Amount paid by the complainants	Rs. 32,52,198/- (Admitted by respondent at page no. 4 of reply)
15.	Occupation certificate	10.10.2023 (Page no. 28 of reply)
16.	Offer of possession	11.12.2023 (Page no. 31 of reply)

**B. Facts of the complaint:**

- That the complainants are allottee(s) within the meaning of Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016. The respondent company is a limited company incorporated under the Companies Act, 1956 and is inter alia engaged in the business of providing real estate services.
- The respondent advertised about its new project "70 Grandwalk" at Sector 70, Gurugram launched by respondent under license no. 34 of 2012, issued by DTCP, Haryana. The respondent painted a rosy picture of the project in its advertisements making tall claims and thereby invited applications from

prospective buyers for the purchase of unit in the said project. The respondent confirmed that the projects had got building plans approval from the authority.

5. That the complainants while searching for a commercial unit was lured by such advertisements and calls from the brokers of the respondent for buying a plot in their project. The respondent company told the complainants about the moonshine reputation of the company and the representative of the respondent company made huge presentations about the project mentioned above and also assured that they have delivered several such projects in the National Capital region. The respondent handed over one brochure to the complainants which showed the project like heaven and in every possible way tried to hold the complainants and incited them for payments.
6. That the complainants booked a commercial unit in the project on 30.10.2014 and paid some booking amount towards the unit bearing no. D-028, Ground Floor, having super area measuring 354 sq. ft. and the same was acknowledged by the respondent.
7. That the respondent confirmed the booking of the unit vide allotment letter dated 11.09.2014, providing the details of the project, confirming the booking of the unit dated 30.10.2014 for a total sale consideration of Rs.39,24,975/- and other specifications of the allotted unit and providing the time frame.
8. That a buyer's agreement was executed between the complainants and the respondent on 15.07.2015. As per the buyer's agreement the sale price of the said apartment shall be Rs. 39,24,975/-, inclusive of the basic sale price, EDC, IDC, preferential location charges.
9. That as per clause 13(ii) of the buyer's agreement, the Respondent had to deliver the possession of the unit within period of 48 months from the date



of the agreement. Thus, the due date of possession comes out to be 15.01.2019.

10. That as per the demands raised by the respondent, based on the payment plan, the complainants had already paid a total sum of Rs. 31,84,164.00 /- towards the said unit against total sale consideration of Rs. 39,24,975/-.
11. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz work done/completed. The complainants approached the respondent and asked about the status of project and also raised objections towards non-completion of the project.
12. That the respondent despite having made multiple tall representations to the complainants have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, BBA and the different advertisements released from time to time. Further, such acts of the Respondent is also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.
13. That the complainants have suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit for their own purposes. They have not only been deprived of the timely possession of the said unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the BBA.
14. That the complainants went to the office of respondent and requested them to allow them to visit the site but it was never allowed saying that they do not permit any buyer to visit the site during construction period. The complainants even after paying amounts still received nothing in return but only loss of the time and money invested by them.

15. That the complainants never delayed in making any payment and always made the payment rather much before the construction linked plan attached to the BBA.
16. That not only the BBA is one sided heavily loaded in favour of the respondent. Needless to mention that such one-sided agreements have been held to be unconstitutional and hence invalid by the Hon'ble Supreme Court and the Hon'ble High Courts in number of cases.
17. That it is an admitted position that the execution of the indemnity-cum-undertaking in the format prescribed by the developer was a pre-requisite condition for the delivery of the possession. The very purpose behind such undertaking was to deter the allottees from making any claim against the developer, including the claim on account of the delay in delivery of possession and the claim on account of any latent defect which the allottees may find in the apartment. The execution of such an undertaking would defeat the provisions of section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being unfair trade practice. Any delay solely on account of the allottee not executing such an undertaking would be attributable to the developer and would entitle the allottee to compensation for the period the possession is delayed solely on account of his having not executed the said undertaking-cum-indemnity.
18. That even if we presume that the same undertaking is legal, it would be noticed that the respondents not having honoured the date of possession even as per the Settlement cum amendment agreement, are not entitled to take advantage of the same and deny the delayed compensation charges as per RERA 2016 and the rules framed thereunder. The stand of the respondent not to pay the delayed possession charges is therefore against



the text and context, letter and spirit of RERA Act, 2016 and HRERA Rules, 2017.

19. That it is also pertinent to mention here that the respondent has arbitrarily demanded for payment of interest on account of delayed payment at the rate of 15%-24% whereas the compensation for delay stipulated for the buyers is merely Rs. 5/- per sq. ft. However, the complainants are actually entitled to interest @ 9.30% per annum on the total sum paid by them.
20. That the complainants are also entitled to the refund of the illegal parking space charges paid by them.
21. That the complainants are entitled to get delay possession charges with interest at the prescribed rate from date of application/ payment till the realization of money under Section 18 and 19(4) of Act. The complainants are also entitled for any other relief which they are found entitled to by this Hon'ble Authority.
22. That the project in question is ongoing as defined under Rule 2(o) of the Rules, ibid and does not fall in any of the exception provided under the Rules.
23. That the complainants after losing all the hope from the respondent company, having their dreams shattered of owning a plot and having basic necessary facilities in the vicinity of the "70 Grandwalk" Project and also losing considerable amount, are constrained to approach this Hon'ble Authority for redressal of their grievances.

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

24. The complainants have sought the following relief(s):
  - i. Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest from the due date of

- possession till the date of handover of actual physical possession of the unit.
- ii. Direct the respondent to handover physical possession of the unit to the complainants.
  - iii. Direct the respondent to obtain the occupation certificate and provide a copy of the same to the complainants.
  - iv. Direct the respondent to provide the actual area of the allotted unit.
  - v. Direct the respondent not to charge anything irrelevant not agreed to between the parties like labour cess, electrification charges, maintenance charges, etc. which in any case are not payable by the complainants.
  - vi. Direct the respondent not to raise fresh demand for payment under any head, as the complainants have already made the payment as per the payment plans.
  - vii. Direct the respondent to refrain from charging the illegal advance maintenance charges from the complainants.
  - viii. Direct the respondent to execute and register the conveyance deed of the booked unit in favour of the complainants.
  - ix. Direct the respondent to set aside the one-sided indemnity bond signed by the complainants under undue influence.
25. 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) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

26. The respondent contested the complaint on the following grounds:
- a. That the present complaint is not maintainable as the complainants have booked the shop in question and buyer's agreement dated



15.07.2015 was executed between the parties before coming into force of the relevant provision of the Real Estate (Regulation & Development) Act, 2016 and the Haryana Real Estate (Regulation & Development) Rules, 2017. The legal provisions have been authoritatively held to be prospective in operation and these do not apply retrospectively before coming into force w.e.f. 01.05.2017. Hence, no interest can be imposed upon the respondent under the provisions of Sections 12, 18 or 19 of the Act as the parties are bound by the terms and conditions agreed and contained in the Buyer's Agreement dated 15.07.2015 which was executed prior to coming into force of Sections 3-19 of the RERA Act/Rules. Hence the Hon'ble Authority has no jurisdiction to modify the terms and conditions of Buyer's Agreement dated 15.07.2015. This Hon'ble Authority has no power to re-write the contract between the parties.

- b. That the complainants have no right to claim more than the amount for delayed possession as agreed between the parties as per Clause 13 (ii) of the buyer's agreement dated 15.07.2015.
- c. That as per clause 13 (ii) of the buyer's agreement dated 12.07.2015, the complainants are entitled for compensation for delayed period, if any, @ Rs. 5 per Sq. Ft. of the super area for every month of delay until the actual date fixed by the company for handing over of possession of the shop to the complainants which was subject to force majeure.
- d. The total cost of the unit including taxes is Rs.45,46,787/- out of which the complainants have only paid an amount of Rs.32,52,198/- and Rs.12,23,789/- is still outstanding against the complainants. The respondent has already offered possession to the complainants.

- e. That as per Clause 13(iv) of buyer's agreement, the parties agreed that in case the completion of the said shop is delayed due to force majeure, then the commitment period, and/or grace period and/or extended delay period, as the case may be shall be extended automatically to the extent of the delay.
- f. That the occupation certificate bearing memo no. ZP-819/JD(RA)/2023/33687 dated 10.10.2023 has been issued to the respondent by the competent authority. The complainants are under contractual obligation to clear their outstanding dues and take possession from the respondent.
- g. That the complaint filed by the complainants is bundle of lies and hence liable to be dismissed as it is filed without any cause of action. That the complainants had intentionally concealed the correct/complete facts from Authority. The complainants are raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.
- h. That the respondent company launched a commercial project "70 GRANDWALK" situated Sector-70, Gurugram. The respondent owned the project land and had even obtained the license for the project under own name in due compliance in order and at par.
- i. That the respondent company with a good repute had complied with all the statutory requirements and holds no litigations. The keeping in view the interest of the allottee(s) at large the respondent had adopted customer centric policy and bears the cost escalations without sharing/passing the burden upon the allottees and had also refrained from making any such demands with respect to the cost escalations.



- j. That after being fully satisfied with specification and veracity of the project, the complainants applied for booking of commercial unit vide application form dated 30.10.2014. However, the complainants were aware of every terms of the application form and decided to sign upon the same after being fully satisfied, without any protest or demur.
- k. That the respondent vide allotment letter dated 20.01.2015 was allotted a unit bearing no. D-028, ground floor admeasuring super area of 354 Sq. Ft. (32.89 sq. mtr.) approximately.
- l. That as the development of the project was affected due to the Covid-19, and accordingly the respondent is entitled for a further extension of 6 months in due date of possession. The date of offering possession was to be calculated from the date of signing of the buyer's agreement and the respondent herein was entitled for extension for such period of delay caused due to force majeure being purely beyond the control of the respondent.
- m. That the respondent was committed to complete the construction of the project within the proposed timeline and till date had invested an amount approx. Rs.1,20,00,00,000/- towards completion of the project including both the land cost and construction related costs/expenditures. The respondent under bonafide had already paid EDC/IDC charges in full to the concerned department and on the contrary, the collection from the allottees of the project was only approximate Rs.45,00,00,000/-. The respondent has already spent more amount than collected from the allottees in completion of the project and even obtained occupation certificate from the concerned department which apparently proves that there was never any mala fide on the part of the respondent and there is no intentional delay in

completion of the project. The respondent is not liable to pay any delayed charges to the complainants.

- n. That in accordance with the provisions of the real estate the respondent had even applied for registration of the said project with the Ld. Authority vide application dated 20.07.2017 and upon receiving the said application the Ld. Authority had granted registration to the respondent for the project in question vide registration no.28 of 2017 dated 28.07.2017 which was duly intimated to the complainant vide email dated 05.08.2017.
- o. That the respondent was committed to complete the development of the project and handover the possession within the proposed timelines. The developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent company due to the impact of Good and Services Act, 2017 which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent had to undergo huge obstacle due to effect of demonetization and implementation of the GST.
- p. That the development of project of the respondent was also adversely affected due to various orders of Hon'ble Supreme Court, National Green Tribunal, directions of Haryana State Pollution Control Board, Orders passed by Municipal Commissioner of Gurgaon, Environment Pollution (Prevention & Control) Authority for National Capital Region for varying period during the year 2017, 2018, 2019 and 2020. The various dates which affected the constructions of the project have been detailed as under:



- a. National Green Tribunal vide order dated 09.11.2017 completely prohibited the carrying on of construction by any person, private or government authority in the entire NCR till the next date of hearing 17.11.2017 when the prohibition was lifted.
- b. Haryana State Pollution Control Board, Panchkula had passed order dated 29.10.2018 in furtherance of directions of Environment Pollution (Prevention and Control) Authority dated 27.10.2018 whereby directing all construction activities involving excavation, civil construction (excluding internal finishing/work where no construction material was used) to remain closed in Delhi and other NCR Districts from 1<sup>st</sup> to 10<sup>th</sup> November 2018.
- c. Commissioner, Municipal Corporation, Gurugram vide order dated 11.10.2019 prohibited construction activity from 11.10.2019 to 31.12.2019. On account of passing of aforesaid order, no construction activity could have been legally carried on by the respondent and accordingly, construction activity had been completely stopped during this period.
- d. Again Environment Pollution (Prevention & Control) Authority, for the National Capital Region vide direction dated 01.11.2019 imposed complete ban on the construction activities in Delhi, Faridabad, Gurugram, Ghaziabad, Noida and Greater Noida until morning of 05.11.2019.
- e. Hon'ble Supreme Court vide order dated 04.11.2019 in the W.P. (Civil) No. 13029/1985 M.C.Mehta vs Union of India & ors; directed for stoppage of all the constructions work till further order. The Hon'ble Supreme Court recalled the ban on construction work only vide order dated 14.02.2020.

- f. Ministry of Housing and Urban Affairs imposed Covid-19 Lockdown vide notification dated 28.05.2020 and complete 9 months extension had been granted.
- q. As per the calculations, the date to offer possession has to be extended by approximately 1.4 years. Subsequently in June, 2021, removal of the Covid-19 restrictions it took time for the workforce to commute back from their villages, which led to slow progress of the completion of project. Despite, facing shortage in workforce, materials and transportation, the respondent managed to continue with the construction work. The respondent also had to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown. This led to further extension of the time period in construction of the Project.
- r. That while computing the date to offer possession, the grace period as agreed by the complainants under clause 13 shall also be considered. As the Hon'ble Supreme Court in 'M/S Supertech Ltd. vs. Rajni Goyal, Civil Appeal No. 6649-50 of 2018', had rightly upheld that the grace period stated in the agreement shall also be considered.
- s. Thus, as per the agreement excluding the force majeure situations, the date to offer possession shall be 15.07.2019, after addition of the grace period as agreed by the complainants under Clause 13 (ii) of the agreement.
- t. That on 08.08.2022, after continuous efforts of respondent towards the completion of the project, the respondent informed the complainants that the mechanical, electrical, plumbing and other related services along with finishing work, tremix work and surface preparation in retail



shops will be completed within 2-3 months. The respondent also stated that offer of possession will be provided within next 3-4 months and soon the complainants will be receiving the call letter for remittance of payment for the last instalment. The respondent also attached photographs showing the progress in the construction of the project.

- u. That the complainants herein, have suppressed the above stated facts and have raised this complaint under reply upon baseless, vague, wrong grounds and have mislead this Hon'ble Authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainants are sustainable before this Hon'ble Authority and in the interest of justice.

27. 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 based on these undisputed documents and submission made by the complainant.

**E. Jurisdiction of the authority:**

28. 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**

29. 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 the entire Gurugram District for all purposes 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**

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

**Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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

## **F. Findings on the objections raised by the respondent:**

### **F.I Objections regarding force Majeure.**

32. The respondent-promoter has raised the contention that the construction of the unit of the complainants has been delayed due to force majeure circumstances such as orders passed by the Hon'ble NGT, Environment Protection Control Authority, and Hon'ble Supreme Court. The pleas of the respondent advanced in this regard are devoid of merit. The orders passed were for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Furthermore, the respondent should have foreseen such situations. Thus, the promoter respondent cannot be given any leniency on the basis of aforesaid reasons.



33. The respondent-promoter also 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 15.07.2015 and as per the terms and conditions of the said agreement the due date of handing over of possession comes 15.01.2019 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.
34. 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 I.As 3696-3697/2020* dated 29.05.2020 which has observed that-

*"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not*

*complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."*

35. 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 15.07.2019. 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

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

**G.I Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest from the due date of possession till the date of handover of actual physical possession of the unit.**

36. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and delay possession charges as provided under the provisions of 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."**

37. Clause 13 of the apartment buyer agreement provides handing over of possession and is reproduced below:

**"(ii) subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the**



*Company, the Company proposes to offer the possession of the said Shop to the Allottee within a period of 42 months from the date of signing of this agreement or approval of the Building plans, whichever is later. The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (six month) ("Grace period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company."*

38. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 42 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months. Therefore, the due date of possession comes out to be 15.07.2019 including grace period of six months being unqualified and unconditional.
39. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules, *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]*

*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."*

40. The legislature in its wisdom in the subordinate legislation under the 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.



41. 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., 10.04.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
42. 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;"*

43. 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.
44. 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 (15.07.2015) or date of approvals of building plans, whichever is later. Therefore, the date of execution of agreement being later, the due date of possession was



calculated from the date of execution of agreement between the parties. Accordingly, the due date of possession comes out to be 15.07.2019. Occupation certificate was granted by the concerned authority on 10.10.2023 and thereafter, the possession of the subject flat was offered to the complainants on 11.12.2023. 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 15.07.2015 to hand over the possession within the stipulated period.

45. 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 10.10.2023. The respondent offered the possession of the unit in question to the complainants only on 11.12.2023, 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, i.e., 15.07.2019 till the expiry of 2 months from the date of offer of possession (11.12.2023) which comes out to be 11.02.2024.

**G.II Direct the respondent to handover physical possession of the unit to the complainants.**

46. The respondent has obtained the occupation certificate from the competent authority on 10.10.2023 and offered the possession of the allotted unit vide letter dated 11.12.2023. 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 60 days of this order.
47. 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 to obtain the occupation certificate and provide a copy of the same to the complainants.**

48. The occupation certificate bearing memo no. ZP-819/JD(RA)/2023/33687 dated 10.10.2023 has been issued to the respondent by the competent authority and same is annexed as Annexure-R2 at page no. 28 of reply. Therefore, no direction to the respondent to the effect of supplying a copy of occupation certificate to the complainants is required in terms of the factual matrix of the present case.

**G.IV Direct the respondent to provide actual area of the allotted unit.**

49. As per section 17(2) of the Act, after obtaining OC and handing over physical possession to the allottees in terms of sub section (1), it shall be the responsibility of the promoter to handover the necessary documents, plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws. Further, as per Section 19(1) of the Act, the allottees are entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in this Act or



rules and regulations made thereunder or the agreement for sale signed with the promoter. Therefore, in view of the same, the respondent is directed to provide details i.e., actual area of the allotted unit in question to the complainant within a period of 1 month from the date of this order.

**G.V Direct the respondent not to charge anything irrelevant not agreed to between the parties like labour cess, electrification charges, maintenance charges, etc. which in any case are not payable by the complainants.**

**G.VI Direct the respondent not to raise fresh demand for payment under any head, as the complainants have already made the payment as per the payment plans.**

50. 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.
51. 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.

52. 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.
53. The respondent is allowed to collect a reasonable amount from the complainants on account of the maintenance charges with respect to IFMSD 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. However, the authority directs that the promoter must always keep the amount collected under this head in a separate bank account and shall maintain that account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFMSD amount and the interest accrued thereon, the promoter must provide details to the allottee. It is further clarified that out of this IFMSD/IBMS, no amount can be spent by the promoter for the expenditure it is liable to incur to discharge its liability and obligations as per the provisions of Section 14 of the Act.
54. The respondent is further directed that it shall not charge anything from the complainants which is not the part of the buyer's agreement.

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

55. 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.

56. 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.VIII Direct the respondent to execute and register the conveyance deed of the booked unit in favour of the complainants.**

**G.IX Direct the respondent to set aside the one-sided indemnity bond signed by the complainants under undue influence.**

57. 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.
58. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

*"17. Transfer of title.-*

*(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:*

*Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."*

59. The authority observes that OC in respect of the project where the subject unit is situated has been obtained by the respondent promoter from the competent authority on 10.10.2023. The respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from the date of this order.
60. The respondent is further directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in complaint bearing no. **4031 of 2019** titled as **Varun Gupta V. Emaar MGF Land Ltd.**

**H. Directions issued by the Authority:**

61. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:
- 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., 15.07.2019 till the date of offer of possession (11.12.2023) plus two months i.e., 11.02.2024, 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 within a period of 60 days from date of this order.
- V. The respondent is directed to provide details i.e., actual area of the allotted unit in question to the complainant within a period of 1 month from the date of this order.
- VI. 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.
- 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 is allowed to collect a reasonable amount from the complainants on account of the maintenance charges with respect to IFMSD as has already been laid down in complaint bearing no. 4031

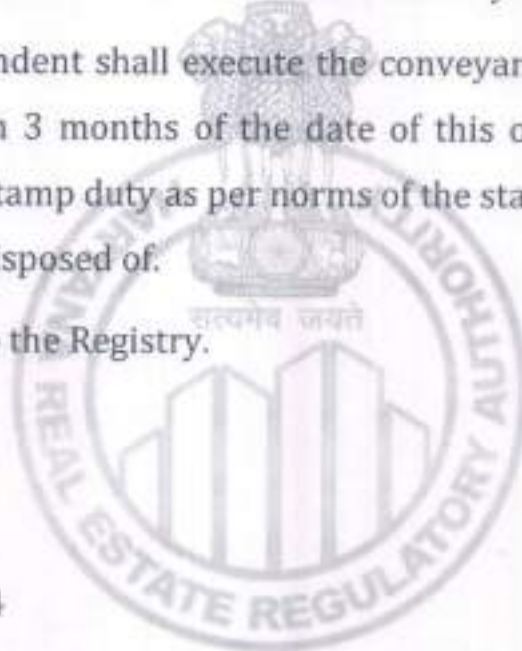
of 2019 titled as "Varun Gupta Vs. Emaar MGF Land Limited" decided on 12.08.2021.

- IX. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
- X. 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.
- XI. The respondent shall execute the conveyance deed of the allotted unit within 3 months of the date of this order upon payment of requisite stamp duty as per norms of the state government.


62. Complaint stands disposed of.

63. File be consigned to the Registry.

Dated: 27.03.2024



**HARERA**  
**GURUGRAM**

  
**Ashok Sangwan**  
**(Member)**  
Haryana Real Estate  
Regulatory Authority,  
Gurugram