

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

Complaint no.: 2948 of 2020
Date of filing: 19.10.2020
Date of decision: 11.01.2024

1. Vinay Kumar
2. Shalini Kumari

Both R/o:- 139C/28, Jyoti Park, near Ashirwad
marriage Garden, Gurugram, Haryana

Complainants

Versus

M/s Vatika Ltd.

Regd. Office: Flat no.621 A, 6th floor, Devika towers, 06,
Nehru place, New delhi

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Kuldeep Kumar Kohli (Advocate)
Shri Dhruv Dutt Sharma (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainants/allottee in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

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A. Project and unit related details

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

S.No.	Particulars	Details
1.	Name of the project	Vatika India Next, Sector-82A, Gurugram, Haryana
2.	Allotment letter	17.03.2010 (page 46 of complaint)
3.	Date of builder buyer agreement	27.07.2010 (page 52 of complaint)
4.	Plot no.	10, 6 th court street, Sector-85B Vatika India Next admeasuring 240 sq. yards
5.	Addendum to the plot dated 10.06.2013	27/R2/85/240 sq. yards (page 85 of complaint)
6.	Possession clause	<p>10. Handing over possession of the plot to the allottee</p> <p><i>That the promoter based on its present plans and estimates and subject to all just exceptions, contemplates to complete the development of the said township or the sector/part thereof where the said plot is proposed to be located, within a period of three years form the date of execution of this agreement unless there is a delay or there is a failure due to reasons beyond the control of the promoter or due to failure of the allottee to pay in time the price of the said plot along with all other charges and dues in accordance with the schedule of payments given in annexure II or as per the demands raised by the promoter from time to time or any failure on the part of allottee to abide by the any terms and conditions of this agreement....</i></p> <p>(Emphasis supplied)</p>
7.	Due date of possession	27.07.2013 (calculated from the date of agreement i.e. 27.07.2010)
8.	Total sale consideration	Rs. 62,76,000/-

		[As per payment plan annexed as annexure II on page 81 of complaint for originally allotted unit)
9.	Amount paid by the complainants	Rs. 31,20,000/- (as alleged by complainants page 09 of complaint)
10.	Occupation certificate	Not obtained
11.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants made the following submissions in the complaint:

- i. That the respondent issued an advertisement for a residential housing project in the name of "Vatika India Next" and invited applications for the purchase of the plots of different size in the said project.
- ii. That on 18.02.2010, the complainants booked a plot no. 10, 6th floor in court street admeasuring 240 sq. yards in the respondent's project and paid an initial amount of Rs.6,24,000/-. Further, a builder buyer agreement was executed on 27.07.2010 between the parties for a basic sale price of Rs.62,40,000/- and the complainants opted for a construction linked payment plan.
- iii. That the complainants paid an amount of Rs.31,20,000/- against the sale consideration of the plot till 11.04.2011. Further, on 10.06.2013 the respondent sent an addendum to the buyer's agreement allotting a new plot no.27/R-2/85 admeasuring 240 sq. yards to them.
- iv. That as per the clause 10 of the buyer's agreement the possession of the plot was to be handed over within the three years form the date of execution of the buyer's agreement i.e. by 27.07.2013. However, the respondent failed to handover the plot as per the agreed terms of buyer's agreement.

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- v. That thereafter, the respondent sent an email dated 27.11.2019 to the complainants assuring to re-allot the plot of the complainants in the project and will handover the same within six to seven months. The complainants followed up respondent to enquire about the status of the project but the respondent failed to give any satisfactory response.
- vi. That clause 7 of the buyers agreement states that the respondent can charge 15% delay interest per annum for the first ninety days after the due date and an additional penal interest of 3% per annum upon exceeding the first ninety days after due date. However, on account of delay in handing over of possession by the respondent is liable to pay 9% p.a. per month of the super area for the period of delay as per clause 13 and 14 of the buyer's agreement which are unjust and amounts to unfair trade practice as held by the Hon'ble NDRC in Shri Satish Kumar Pandey & anr. V/s M/s Unitech Ltd.(14.07.2015) and in Neelkamal Realtors Suburban Pvt. Ltd. V/s UOI & ors.(W.P. 2737 of 2017) passed by the Hon'ble Supreme Court of India.
- vii. That after losing all hope from the respondent and having shattered and scattered dreams of owing a unit and also losing a considerable amount of time and money the complainants have not received the possession till date.
- viii. That as per section 11(4) of the Act, the promoter is liable to abide by the terms and agreement of the sale. As per section 18 of the Act 2016, the respondent is liable to pay interest on the allottees of an apartment, building or project for a delay in handing over of possession as per the terms and conditions of the buyer's agreement. Accordingly, the complainants are entitled to get interest at the rate as prescribed by the authority from the due date of possession till handing over of the possession.

- ix. That the complainants have been diligently making the payments as per the demand raised by the respondent, hoping that the possession will be delivered to them soon. But, their hope shattered as the respondent has failed to intimate any date of delivery of possession of the plot. That perturbed by the lingering silence on the part of the respondent, the complainants have preferred the present complaint before the authority to issue necessary directions to the respondent to handover the possession of the allotted unit along with delay period interest.

C. Relief sought by the complainants

4. The complainants have filed the present complaint for seeking following relief(s):
- i. Direct the respondent to handover the possession of the allotted unit.
 - ii. Direct the respondent not to cancel the allotment of the unit.
 - iii. Direct the respondent not to raise any fresh demands with respect to the project.
 - iv. Direct the respondent to adjust the entire amount of interest due to the complainants from the date of delivery period as per the buyer's agreement to the actual delivery of possession against the legal demands from the complainants.
 - v. Direct the respondent to pay the balance amount due to the complainants from the respondent on account of interest before signing sale deed together with unambiguous intimation/offer of possession.
 - vi. Direct the respondent not to charge anything not a part of agreement.
 - vii. Direct the respondent not to ask for monthly maintenance charges for a period of 12 months or more in advance.
 - viii. Direct the respondent not to force the complainants to sign any indemnity cum undertaking to abide illegal terms

5. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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 has contested the present complaint on the following grounds:

That the complainants are real estate investors who have made the booking with the respondent only with an intention to make profit in a short span of time. However, their calculations have gone wrong on account of severe slump in the real estate market and therefore the complainants filed the present false and frivolous complaint.

- i. That the complainants willingly approached the respondent through their broker after thoroughly verifying the project's authenticity. The complainants before reaching out to the respondent, conducted thorough and independent investigations into the project and after ensuring satisfaction with all aspects of the project, including the respondent's ability to handle conceptualization, promotion, development, and construction, the complainants independently decide to purchase the plot without any influence from the respondent.
- ii. That the total sale consideration amount was exclusive of the registration charges, stamp duty charges, service tax and other charges which were to be paid by the complainants at the applicable stage.
- iii. That the respondent did not promised to deliver the plot within 3 years from the date of the agreement, and the due date of possession was not 27.07.2013. The time period for delivering possession was subject to the terms of the plot buyer's agreement. They have misunderstood and misinterpreted the clauses in the plot buyer's agreement. The specified timelines in the agreement were tentative and subject to the buyer

- fulfilling their obligations. The timelines in the agreement were subject to various unforeseen events, force majeure circumstances, and other mentioned conditions.
- iv. That the complainants did not object to the re-allotment, nor did they communicate this to the respondent. The complainants themselves admitted and acknowledged in the addendum to the plot buyer agreement that they are fully satisfied and readily accepted the allotment of the new plot number without any objection or protest.
- v. That due to various cogent/unforeseen circumstances the subject plot cannot be delivered to the complainants. However, the respondent is ready and willing to offer alternate residential unit to the complainants and/or alternatively is ready to refund the amount deposited by the complainant as per agreement. The subject plot could not be delivered due to following reasons such as laying of a gas pipeline, delays in land acquisition for sector roads, labour shortages due to government MNREGA schemes, disruptions in material supplies due to court orders, restrictions on groundwater extraction, delayed re-routing of an electricity line, and additional restrictions on construction activities. The Covid-19 lockdown also impacted construction activities.
- vi. That there was no deficiency in service or unfair/restrictive trade practices, nor any lack of accountability or transparency. The respondent had not duped the customers or committed a breach of contract. The present complaint had been filed with malafide motives and was liable to be dismissed with heavy costs payable to the respondent. The present complaint is based on an erroneous interpretation of the provisions of the Act, 2016 and an incorrect understanding of the terms and conditions of the Buyer's Agreement. The respondent was not liable to pay interest as per the provisions of Act, 2016, and the provisions laid down in the

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said Act could not be applied retrospectively, and the complainants are not entitled to assert any claim beyond the scope of the buyer's agreement executed between the parties. and hence denied the complainants are not entitled to any such reliefs.

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 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

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 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

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

Section 11

.....

(4) The promoter shall-

- (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the

association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Objections raised by the respondent

F.I Objection regarding the complainants being investors.

13. The respondent took a stand that the complainants are investor and not consumers and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyer's, and he has paid a total price of Rs.31,20,000/- to the promoter towards purchase of a unit in its project. 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 the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to 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 the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to handover the possession of the allotted unit.

G.II Direct the respondent to pay the balance amount due to the complainants from the respondent on account of interest before signing sale deed together with unambiguous intimation/ offer of possession.

G.III Direct the respondent to adjust the entire amount of interest due to the complainants from the date of delivery period as per the buyer's agreement to the actual delivery of possession against the legal demands from the complainants.

15. 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.

16. 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. Sec. 18(1) proviso reads as under:

"Section 18: - Return of amount and compensation

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

.....

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

17. Clause 10 of the plot buyer's agreement provides for time period for handing over of possession and is reproduced below:

"10. Schedule for Possession of the said Unit

*That the promoter based on its present plans and estimates and subject to all just exceptions, contemplates to complete the development of the said township or the sector/part thereof where the said plot is proposed to be located, **within a period of three years form the date of execution of this agreement** unless there is a delay or there is a failure due to reasons beyond the control of the promoter or due to failure of the allottee to pay in time the price of the said plot along with all other charges and dues in accordance with the schedule of payments given in annexure II or as per the demands raised by the promoter from time to time or any failure on the part of allottee to abide by the any terms and conditions of this agreement....*

18. The promoter has proposed to hand over the possession of the said unit within 3 years from the date of execution of the plot buyer agreement. In the present complaint, the plot buyer agreement was executed on 27.07.2010. Therefore, the due date of handing over possession as per the buyer's agreement comes out to be 27.07.2013.

19. The authority observes that the aforesaid buyer's agreement dated 27.07.2010 was executed between the parties with respect of plot bearing no. 10, 6th court street to be constructed on plot measuring 240 sq. yards in the project namely "Vatika India Next". Thereafter, an Addendum to buyer's agreement was executed between the complainants and respondent on 10.06.2013 in respect of Plot no. 27/R2/85. The addendum agreement dated 10.06.2013 states that '*all other terms and conditions of the builder buyer's agreement dated 27.07.2010 shall remain unaltered and effective*'. The complainants have filed the present complaint on 19.10.2020 seeking possession and delay possession charges as per proviso to section 18 (1) of the Act.

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20. The case of the respondent is that due to change in the alignment of the GAIL pipeline, the plot/unit in question is not available. However, the counsel for the complainants in their written submission stated that the excuse of the gas pipeline is being regularly taken by the respondent while refusing to delivery of the plots to buyer's and requested for the appointment of local commissioner to ascertain which plots are impacted by virtue of gas pipeline as alleged by the respondent. Further, prayed to direct the respondent to handover alternative unit of same size i.e. 240 sq. yds as per the agreed terms of buyer's agreement dated 27.07.2010. Thus, vide order dated 11.02.2021, the respondent was directed to submit the detailed list of all vacant/un-allotted plots and to allot an alternate unit to the complainants. However, after giving several opportunities respondent failed to comply with the orders.
21. Subsequently, during proceedings dated 09.09.2021 the respondent offered to refund the paid-up amount in case of non-availability of plots but the complainants refused to accept the same.
22. Thereafter, the local commissioner was appointed vide order dated 12.10.2021 to examine changes made in the project in contradiction to the original layout plan. The local commission submitted its report on 27.01.2023 and the relevant portion is reproduced as under:

"Conclusion:

- I. Originally a plot no. 10, 6th Court street, Sector-85B, Gurugram was allotted to the complainant on 27.07.2010 and after than an addendum was made on 10.06.2013 wherein the plot was reallocated vide plot no. 27/R-2/85/240Sqyds/Sec 85.*
- II. As per revised approved layout plan for an area measuring 477.206 acres, the reallocated plot exists in Sector-85, Gurugram but the land where the plot is located is lying vacant as a raw land.*
- III. The respondent has further revised the layout plan and got approved from DTCP after obtaining LOI for additional 12.50625 acres, **total area measuring 489.71625 acres for the project in which the reallocated plot of complainant has been deleted from the location where it was located***

in the approved layout plan for area measuring 477.206 acres. The area as on date is still laying vacant as a raw land".

IV. The representative of the respondent was asked about the location of the reallocated plot to the complainant, but he failed to explain the same. The representative was also asked to explain the layout plan and the revisions therein particularly for the complainant plot, but he again didn't call any technical person. No technical person is appearing on behalf of the respondent to explain the changes made in the project in contradiction to the original layout plan and the status/location of the complainant plot in the project.

23. After carefully considering the facts presented in this case, it is evident that the complainants booked plot no.10 in the year 2010 with expectation of possession by 2013. The respondent instead of handing over the possession of the plot, apprised the complainants that the possession of the booked plot cannot be delivered and therefore, reallocated another plot 27/R-2/85/240Sqyds/Sec85 vide addendum dated 10.06.2013 to the complainants. However, the respondent again failed to handover the possession of the reallocated plot due to the presence of a gas pipeline running through it. The local commissioner report clearly shows that the reallocated plot of the complainants has been deleted from the location subject to approved layout plan for area measuring 489.71625 acres and the same area is laying vacant as a raw land. The authority is of view that since the possession of the reallocated plot cannot be granted in view of factual matrix explained by the local commissioner above, therefore the respondent be directed to make an offer of alternative unit to the complainants. It is noteworthy that the respondent despite expressing readiness to offer an alternative unit to the complainants in his reply has failed to offer the same. In light of these observations, the respondent is directed to offer an alternative unit to the complainants at the same rate as per the agreed terms of the subject agreement and handover its physical possession after obtaining occupation certificate from the competent authority.

24. Moreover, the interest (DPC) component is levied to balance the time value component of the money. However, the same is applicable on the amount paid by allottee for the delay in handing over of the possession by the respondent from the date of possession till offer of possession and the same is balanced vide provision of section 2(za) of the Act. The complainants cannot be made ^{to} suffer due to fault of the respondent and suppose to pay for the unit as per today's rate.
25. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:
- Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**
- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.
26. 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.
27. 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., 11.01.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

28. 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—

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

29. 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.

30. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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 buyer's agreement. The builder buyer agreement dated 27.07.2010 was executed between the complainants and the respondent in respect of plot no. 10, 6th street admeasuring 240 sq. yds. Thereafter, an addendum to the agreement was executed between the parties on 10.06.2013 in respect of Plot no. 27/R-2/85/240Sqyds/Sec 85 i.e, the unit in question. By virtue of clause 10 of the buyer's agreement executed between the parties on 27.07.2010 the possession of the said unit was to be delivered within a period of 3 years

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from the date of execution of the builder buyer agreement. Therefore, the due date of handing over possession comes out to be 27.07.2013. The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure on the part of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

31. The complainants are also seeking relief of possession. The authority is of the considered view that there is delay on the part of the respondent to offer possession of the allotted unit to the complainants as per the terms and conditions of the builder buyer agreement dated 27.07.2010 executed between the parties.
32. Thus, the respondent is liable to offer alternative similar situated plot/unit to the complainants as per specifications of original BBA dated 27.07.2010 at the same rate at which the unit was earlier purchased and on a similar location. The rationale behind the same that the allottee booked the unit/villa in the project way back in 2010 and paid the demanded amount in a hope to get the possession.
33. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at prescribed rate of the interest @ 10.85 % p.a. w.e.f. due date of possession i.e., 27.07.2013 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.IV Direct the respondent not to cancel the allotment of the unit.

34. As, per the documents placed on record, there is no document which shows that the respondent has cancelled the unit. The complainants may approach the authority when the cause of action in this regard arose.

G.V Direct the respondent not to ask for monthly maintenance charges for a period of 12 months or more in advance.

35. This issue has already been dealt by the authority in complaint bearing no. **CR/4031/2019 titled as Varun Gupta Vs. Emaar MGF Land Limited wherein** it is held that the respondent is right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement 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 raise any fresh demands with respect to the project.

G.VII Direct the respondent not to charge anything not a part of agreement.

36. 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.

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

G.VIII Direct the respondent not to force the complainant not to sign any indemnity cum undertaking to abide illegal terms

38. The respondent is 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.**

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H. Directions of the authority

39. 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 offer possession of the alternative plot as agreed between the parties, at the same rate and specifications at which the unit was earlier purchased within two months from the date of this order and handover the possession of the alternative unit to the complainants after obtaining of occupation certificate/ CC/part CC from the competent authority as per obligations under section 11(4) (b) read with section 17 of the Act, 2016 and thereafter, the complainants are obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016.
- ii. The respondent is directed to pay the interest at the prescribed rate i.e. 10.85 % p.a. w.e.f. due date of possession i.e., 27.07.2013 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- iii. The arrears of such interest accrued from due date of possession till the date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the respondent-promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- iv. The complainants w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject

plot/unit, within a period of two months of the completion certificate or occupation certificate from the competent authority.

- v. The respondent shall not charge anything from the complainants which are not the part of the builder buyer agreement. The respondent is also not entitled to claim holding charges from the complainants/allottee 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 on 14.12.2020.
- vi. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed. The rate of interest chargeable from the complainants/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 delay possession charges as per section 2(za) of the Act.

40. Complaint stands disposed of.

41. File be consigned to registry.

Dated: 11.01.2024


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory
Authority, Gurugram