

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

<b>Complaint no.:</b>	<b>4263 of 2022</b>
<b>Date of filing:</b>	<b>20.06.2022</b>
<b>Date of decision:</b>	<b>16.02.2024</b>

1. Kumud Bandhu Mishra
2. Anamika Mishra

**R/o** 1029, Apna Villa Society, Plot no. 24, Sector 10,  
Dwarka, Delhi-110075

**Complainants**

Versus

M/s JMK Holding Pvt. Ltd.

**Office address:** 1302, 13<sup>th</sup> floor, Dr. Gopal Das Bhawan,  
28 Barakhamba Road, Cannought Place, New Delhi-  
110001.

**Respondent**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Mr. Jagdeep Kumar (Advocate)

Complainants

Mr. Niraj Kumar (Advocate)

Respondent

**ORDER**

1. The present complaint has been filed by the complainants/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 as provided under the provision 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. Project and unit related details**

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

S.N.	Particulars	Details
1.	Name of the project	"Grandiva", Sector 103, Gurugram
2.	Nature of project	Affordable Group Housing Colony
3.	Licensed area	9 acres
4.	DTPC License no.	157 of 2014 dated 11.09.2014 and valid up to 05.05.2021
	Name of licensee	JMK Holdings Pvt. Ltd.
5.	HARERA Registration no.	Registered 13 of 2017 dated 03.07.2017 and valid up to 28.03.2021
6.	Unit no.	Flat no. 12-203, 2BHK (Type A), 2 <sup>nd</sup> floor. [pg. 34 of the complaint]
7.	Carpet area	605.09 sq. ft. Balcony area- 94.94 sq. ft. [pg. 34 of the complaint]
8.	Date of allotment	30.05.2016 [pg. 34 of the complaint]
9.	Date of buyer's agreement	24.08.2016 [pg. 37 of the complaint]



10.	Approval of building plans	11.05.2016 [As per the details provided by the planning branch of the authority]
11.	Environment clearance	29.09.2016 [As per the details provided by the planning branch of the authority]
12.	Possession Clause	In absence of execution of the agreement under Affordable <b>housing project, the possession clause given under the Affordable Housing Policy 2013 would prevail.</b> Section 1 (iv) of Affordable housing policy 2013 which provides as under: <b>Section 1 (iv)</b> All such projects shall be required to be necessarily completed <b>within 4 years from the approval of building plans or grant of environmental clearance, whichever is later.</b> This date shall be referred to as the date of commencement of project" for the purpose of this policy. The license shall not be renewed beyond the said 4 years period from the date of commencement of project. (Emphasis supplied)
13.	Due date of possession	29.03.2021 [Calculated from the date of environmental clearance + 6-month grace period as per RERA notification 3 of 2020 on account of COVID-19]
14.	Total sale consideration	₹ 27,00,420/- [As per customer ledger dated 07.02.2022 at page 58 of the complaint]
15.	Amount paid by the complainants	Rs. 27,00,738/- [As per customer ledger dated 07.02.2022 at page 58 of the complaint]
16.	Occupation certificate	20.04.2021 [as alleged by the respondent at page 2 of the reply]

		License no. mentioned in sample BBA is different from license no. in the copy of occupation certificate attached by the respondent
17.	Offer of possession	27.04.2021 [pg. 73 of the complaint]
18.	Possession certificate	24.09.2021 [pg. 77 of the complaint]

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:-
- a. That somewhere in the month of November 2015, the respondent through its business development associate approached the complainant with an offer to invest and buy a flat in the proposed project of respondent, which the respondent was going to launch the project namely "GRAND IVA" in the Sector-103, Gurugram. In December complainant had a meeting with respondent at the respondent's branch office at tower - A, Signature Tower, South City- 1, Gurgaon-122001 where the respondent explain the project "GRAND IVA" and highlighted that under project (GRAND IVA) allotment of apartments shall be done through draw of lots as per procedure defined under Affordable Housing Policy 2013 notified vide no. PF-27/48921 dated 19.08.2013, respondent represented to the complainant that the respondent is a very ethical business house in the field of construction of residential and commercial project and in case the complainant would invest in the project of respondent then they would deliver the possession of proposed flat on the assured delivery date as per the best quality assured by the respondent. The respondent had further assured to the

complainant that the respondent has already processed the file for all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The complainant while relying upon those assurances and believing them to be true, complainant submit application with respondent for 2 BHK flat measuring carpet area 605.09 sq. ft. and balcony area 94.45 sq. ft. under draw of lots in the aforesaid project of the developer and made payment of application amount of ₹ 1,23,392/- vide Inst no 45828184 dated 11<sup>th</sup> December 2015.

- b. That in the said application form, the price of the said flat was agreed at the rate of ₹ 4,000/- per sq. ft. for carpet area and ₹ 500/- per sq. ft. for balcony area as mentioned in the said application form. At the time of execution of the said application form, it was agreed and promised by the respondent that there shall be no change, amendment or variation in the area or sale price of the said flat from the area or the price committed by the respondent in the said application form or agreed otherwise.
- c. That on 30.05.2016 the respondent issued an offer of allotment through letter dated 30.05.2016 in the name of complainant, respondent offered a residential unit no. 12-203, "Grand IVA" Sector 103, Gurgaon, Haryana at price of ₹ 24,67,830/-. The said offer of respondent was accepted by complainant and made the requisite payment of ₹ 5,21,330/- to respondent through Inst no. 986494543 dated 14.06.2016.

- d. As per affordable housing policy 2013, allotment of flat can only be done after the "Commencement of Project" respondent raise a demand of 20% of consideration value by issuing the allotment letter to complainant on 30<sup>th</sup> May 2016, complainant while relying upon respondent and believing that respondent raised this demand only after commencement of project, complainant paid the demand raised at the time of allotment of flat by respondent. To the utter shock and surprise, respondent on first week of October 2016 informed complainant through email that environment clearance of project is obtained on 29.09.2016, the complainant approached the respondent and enquire about the same, how come respondent can raised the demand of 20% of payment without millstone achievement of the "Commencement of Project" which is contrary to the advertisement issued by respondent and also divergent from the payment plan specified under Affordable Housing Policy 2013 notified vide no. PF-27/48921 dated 19.08.2013. Complainant opposes the payment demands of the respondent. Complainant's representative visited the office of respondent on 20.10.2016 to resolve the issue of unreasonable demand of payments in amicable manner. Respondent assured complainant that respondent will pay the interest as per clause 5 (b) at the time of possession for delaying the allotment of flat and further demands of instalments will be made in accordance with the Affordable Housing Policy 2013 by considering the commencement date as 29.09.2016 and project will be completed within 4 years from the date of "Commencement of Project" as per the Affordable Housing Policy 2013, but even

after assurance made to complainant verbally to pay in accordance to the payment terms specified under Affordable Housing Policy 2013, respondent did not rectify the mistake in respondent's self-proclaim & arbitrary payment plan and taking advantage his own wrong, respondent keep on sending the demands for instalment as per his arbitrary payment plan, which is a unfair and fraudulent trade practices.

- e. That from the date of submitting application for allotment 11.12.2015 and till 27.04.2021, the respondent had raised various demands for the payment of instalments on complainant towards the sale consideration of said flat and the complainant have duly paid and satisfied all those demands as per the Haryana Affordable Housing Policy 2013 without any default or delay on their part and have also fulfilled otherwise also their part of obligations as narrated in the unsigned flat buyers agreement. The complainant were and have always been ready and willing to fulfil their part of agreement, if any pending.
- f. That as per buyer's agreement dated 24.08.2016, the sales consideration for said flat was ₹ 24,67,832/- (which includes the cost of providing the common facilities) exclusive of service tax and GST but later at the time of possession, respondent added ₹ 66,326/- in sale consideration without any reason for the same, which is an illegal, arbitrary, unilateral and unfair trade practice.
- g. That the complainant has paid the entire sale consideration along with applicable taxes to the respondent for the said flat. The complainant has already paid ₹ 27,00,738/- towards total sale

consideration and applicable taxes as on today to the respondent, as demanded time to time.

- h. That on the date agreed for the delivery of possession of said unit as per date of booking and later on according to the Haryana Affordable Housing Policy 2013 is 30.05.2020, the complainant had approached the respondent and its officers for inquiring the status of delivery of possession, but none had bothered to provide any satisfactory answer to the complainant about the completion and delivery said flat. The complainant thereafter kept running from pillar to post asking for the delivery of his flat but could not succeed in getting any reliable answer.
- i. That the respondent has acted in a very deficient, unfair, wrongful, fraudulent manner by not delivering the said flat situated at the project "GRAND IVA" Sector-103, Gurugram within the timelines agreed in the flat buyer's agreement and otherwise.
- j. That on 27.04.2021 complainant received an email through which the respondent has sent an intimation regarding offer of possession letter dated 24.04.2021. The offer of possession by the respondent was an invalid offer of possession because as the respondent sent offer of possession letter without completing the construction work at site, and the said offer of possession letter also accompanied with unreasonable additional demands which are unilateral, arbitrary and contrary to the guidelines and policy terms and conditions of Haryana Affordable Policy 2013. Respondent unilaterally raised a demand of administrative charges ₹ 17,700/-, advance electricity charges ₹6,000/-, external electrification





charges ₹19,557/-, IFSD of ₹15,000/- meter connection charges ₹ 4,544/-, water connection charges ₹3,207/-, and user charges for operational cost of utility services of ₹24,325/- and ₹ 4,378/- for GST thereof while the maintenance is free for five years under Affordable Housing Policy 2013 and GST is not applicable. The demand of the said maintenance and GST is illegal which is created by the respondent /promoter through Skyfull Maintenance Services Pvt. Ltd., a promoter's group company. The promoter is trying to extort hard earned money of the low-income group flat buyer including complainant, by making such illegal and unjust demands. The said demands are illegal & contrary to the provisions of Affordable Housing Policy 2013 and clear violations. Complainant opposed all the illegal demands of respondent and under protest made the payment of all unjustified demands of respondent in want of taking the possession of the said flat, but even after paying all aforesaid payments on 28,05,2021, respondent sent email on 24.11.2021 to take the physical possession of the flat.

- k. That on 14.12.2021 complainant wrote an email inform respondent that respondent is creating anomaly by delaying the possession and by imposing unilateral, arbitrary and unjustified charges which are not specified in buyers agreement and Affordable Housing Policy 2013, complainant also urge respondent to compensate the complainant for delay possession charges at the rate of interest specified in RERA Act 2016. Complainant makes it clear to respondent that, respondent should refund the excess amount

charged from complainant and adequately compensate the complainant for delay possession interest, otherwise complainant will approach the appropriate forum to get redressal.

- l. That on 19.12.2021 respondent gives the physical handover of said flat to complainant, which complainant accepted under protest, as the respondent did not refund the excess payment charged from complainant till that time.
- m. That after taking possession of flat on 19.12.2021 under protest, complainant wrote email on 22.12.2021 to respondent to in draw attention of the respondent towards incomplete and the pending construction work of the project. The complainant demanded credit of Input tax credit, interest for delayed possession period as per RERA Act 2016 and urges respondent to withdraw such unreasonable demands and fulfil the obligation of providing and earmarked two wheeler scooter parking space as prescribed in policy. As on 22.12.2021 the respondent did not completed the construction activities at project site. Complainant's representative visited the flat on 22.12.2021 and found that respondent did not made the arrangements of two wheeler parking, instead respondent create extra flats in the place of proposed stilt two wheeler parking area, which is a gross violation of Haryana Affordable housing policy,2013.
- n. That the cause of action accrued in favour of the complainant and against the respondent on 11.12.2015 when the complainant had submitted an application for the said flat and it further arose when respondent failed /neglected to deliver the said flat on proposed

delivery date. The cause of action is continuing and is still subsisting on day-to-day basis.

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

4. The complainants have sought following relief(s)
  - a. Direct the respondent to pay DPC till date of delivery of possession.
  - b. Direct the respondent to pay interest to complainant in pursuit of clause 5(III)(B) of Affordable housing policy for delay in allotment of said flat to complainant.
  - c. Direct the respondent to pay interest on payments taken by respondent from complainant prior to the due date as specified under affordable housing policy 2013. Respondent collected payments prior to the due dates by implementing a self-proclaim & arbitrary payment plan which is divergent from payment plan specified under policy, 2013.
  - d. Direct the respondent to earmarked two-wheeler parking in the project.
  - e. Direct the respondent to refund administrative charges of ₹17,700/-.
  - f. Direct the respondent to refund advance electricity consumption deposit charges of ₹6,000/-.
  - g. Direct the respondent to refund external electrification charges of ₹19,557/-.
  - h. Direct the respondent to refund for interest free security deposit of ₹15,000/-.
  - i. Direct the respondent to refund meter connection charges of ₹ 4,544/-.



- j. Direct the respondent to refund water connection charges of ₹ 3,207/-.
  - k. Direct the respondent to refund for maintenance or operational cost of utility services of ₹ 28,703/-.
  - l. Direct the respondent to construct community sites as per guidelines of policy, 2013.
  - m. Cost of litigation-₹ 55,000/-.
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 has contested the complaint on the following grounds:
- a. That the complaint had applied for allotment of flat under the Affordable Housing Policy 2013 wherein allotment was made on 30.05.2016. That the allotment was subject to payment schedule which is time linked and independent of status of the constructions.
  - b. That the approval of the Directorate of Town & Country Planning was received vide approval dated.11.05.2016 while the environment clearance was received vide approval dated 29.09.2016.
  - c. That the occupancy certificate for the building was received on 20.04.2021 and accordingly offer of possession was made to the complainant.
  - d. That the possession of the flat was subject to force majeure events, and it is respectfully submitted the project has been delayed on

account of force majeure circumstances which was beyond the control of the respondent. It is submitted that the project has been delayed on account of following force majeure events:

- i. The novel coronavirus had been declared as a pandemic by World Health Organization. Following the declaration of the World Health Organization, the Ministry of Home Affairs, Government of India vide notification 40-3/2020-DM-I(A) dated 24.03.2020 under the Disaster Management Act, 2005, had imposed lockdown for whole of India for 21 days with effect from 25.03.2020.
  - ii. That further Ministry of Finance vide office memorandum no. F-18/4/2020-PPD dated 13.05.2020 recognized that given the restriction placed on the goods, services and manpower on account of the lockdown situation prevailing overseas and in the country in terms of the guidelines issued by the MHA under the DM Act 2005.
  - iii. That it is respectfully submitted to the Hon'ble Haryana Real Estate Regulatory Authority vide order no.9/3-2020 HARERA/GGM (Admn.) dated 26.05.2020 extended the date of completion for all Real Estate Projects registered under Real Estate Regulation and Development Act, where completion date, revised completion date or extended completion date was to expire on or after 25<sup>th</sup> of March, 2020 automatically by 6 months, due to outbreak of the COVID -19.
- a. Moreover, it is pertinent to mention that the agreement of sale notified under the Haryana Real Estate (Regulation and Development) Rules,

2017 categorically excludes any delay due to "force majeure", court orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project. That in addition to the aforesaid period of 9 months, the following period also deserves to be excluded for the purpose of computation of period available to the respondent to deliver physical possession of the apartment to the complainant as permitted under the Haryana Real Estate (Regulation and Development) Rules, 2017:

- i. Order dated 8th of November 2016 passed by National Green Tribunal completely prohibiting the carrying on of construction by any person, private or government authority in the entire NCR till the next date of hearing.
  - ii. Haryana State Pollution Control Board, Panchkula had passed the order dated 29<sup>th</sup> of October 2018 in furtherance of directions of Environment Pollution (Prevention and Control) Authority dated 27<sup>th</sup> of October 2018 all construction activities involving excavation, civil construction (excluding internal finishing/work where no construction material was used) were directed to remain closed in Delhi and other NCR Districts from 1<sup>st</sup> to 10<sup>th</sup> November 2018.
  - iii. Commissioner, Municipal Corporation, Gurugram had passed order dated 11<sup>th</sup> of October 2019 whereby construction activity had been prohibited from 11<sup>th</sup> of October 2019 to 31<sup>st</sup> of December 2019.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be

decided on the basis of these undisputed documents and submission made by the parties.

8. The complainant and the respondent submitted the written submission in the authority dated 27.07.2023 & 19.05.2023 respectively.

**E. Jurisdiction of the authority**

9. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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, 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 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 relief sought by the complainants.**

**F.I. Direct the respondent to pay DPC till date of delivery of possession.**

13. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges interest on the amount paid. 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:

**"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. -

(a)

i  
n accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

**he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with**





*interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*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)*

14. As per affordable housing policy, 2013:

*"In absence of execution of the agreement under Affordable housing project, the possession clause given under the Affordable Housing Policy 2013 would prevail. Section 1 (iv) of Affordable housing policy 2013 which provides as under:*

*Section 1 (iv)*

*All such projects shall be required to be necessarily completed **within 4 years from the approval of building plans or grant of environmental clearance, whichever is later.** This date shall be referred to as the date of commencement of project" for the purpose of this policy. The license shall not be renewed beyond the said 4 years period from the date of commencement of project."*

15. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and

to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

- 16. Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said flat within a period of 4 years from the date of approval of building plans (11.05.2016) or grant of environment clearance, (29.09.2016) (hereinafter referred to as the "Commencement Date"), whichever is later. The period of 4 years is calculated from environment clearance i.e., 29.09.2016 being later. The period of 4 years expired on 29.09.2020. The respondent has sought further extension of a period of 6 months on account of Covid-19 (after the expiry of the said time period of 4 year) but there is no provision in relation to grace period in Affordable Group Housing Policy, 2013. Since the period of 4 years expires on 29.09.2020 the authority after considering the facts and circumstances of the case and acting under its notification no. 9/3-2020 HARERA/GGM(Admn) dated 26.05.2020 hereby allows the 6 months grace period over and above the 4 years. Therefore, the due date of handing over possession is 29.03.2021.
- 17. Admissibility of delay possession charges along with prescribed rate of interest:** The complainants are seeking delay possession charges for the delay in handing over the possession at the prescribed rate of interest. However, the allottees intend to continue with the project and are seeking delay possession charges in respect of the



subject unit with interest at prescribed rate as provided 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.*

18. The legislature in its wisdom in the subordinate legislation under the provision of 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.
19. 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., **16.02.2024** is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
20. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of affordable housing policy, 2013, the possession of the subject apartment was to be delivered within 4 years from date of building plan approval or environment clearance whichever is later. The period of 4 years is calculated from environment clearance i.e., 29.09.2016 being later. The period of 4 years expired on 29.09.2020. As

far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 29.03.2021. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 29.03.2021 till the date of offer of possession i.e., 27.04.2021 plus two months which comes out to be 27.06.2021, at prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**F.II. Direct the respondent to pay interest to complainant in pursuit of clause 5(III)(B) of Affordable housing policy for delay in allotment of said flat to complainant.**

21. The above relief is neither pressed in the pleadings nor during the course of arguments accordingly, the authority cannot deliberate upon the said relief.

**F.III. Direct the respondent to pay interest on payments taken by respondent from complainant prior to the due date as specified under affordable housing policy 2013. Respondent collected payments prior to the due dates by implementing a self-proclaim & arbitrary payment plan which is divergent from payment plan specified under policy, 2013.**

22. The authority while going by the statement of account dated 07.02.2022 attached by the complainant observes that the complainant has not paid any payment prior to the due date and the respondent raised the demand as per the time linked plan as prescribed under policy, 2013. Accordingly, the said relief stands redundant in view of the findings given above.

**F.IV. Direct the respondent to earmarked two-wheeler parking in the project.**



23. Clause 4(iii)(b) of the affordable policy, 2013 states that only one two-wheeler parking site shall be earmarked for each flat, which shall be allotted only to the flat owners. The parking bay of two-wheelers shall be 0.8m x 2.5m unless otherwise specified in the zoning plan. Accordingly, the respondent is directed to earmark one two-wheeler parking space to the complainant in the project.

**F.V. Direct the respondent to refund administrative charges of ₹17,700/-**

24. The authority has already dealt with the above charges in the compliant bearing no. **CR/4147/2021** titled as **Vineet Choubey V/S Pareena Infrastructure Private Limited** wherein the authority has held that a nominal amount of ₹15000/- could be charged by the promoter/developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard. In the present matter the respondent has demanded an amount of ₹ 17,700/- which includes administrative charges i.e., ₹15,000/- including applicable taxes ₹2,700/-. Accordingly, the respondent is right in charging the said amount.

**F.VI. Direct the respondent to refund advance electricity consumption deposit charges of ₹6,000/-**

25. The authority has already dealt with the above charges in the compliant bearing no. **CR/4147/2021** titled as **Vineet Choubey V/S Pareena Infrastructure Private Limited** wherein the authority has held that the charges under this head are being demanded so that the allottee(s) should have power connection in his/ her unit at the time of possession and that amount should be adjusted in the electricity bill as per the consumption of power.



**F.VII. Direct the respondent to refund external electrification charges of ₹ 19,557/-.**

26. The authority has already dealt with the above charges in the compliant bearing no. **CR/4147/2021** titled as **Vineet Choubey V/S Pareena Infrastructure Private Limited** wherein the authority has held that the colonizer would provide the detail of expenditure to the complainant(s) and they can verify the same from DHBVN, if required. Thus, when the claimant(s) agreed to pay charges under this head on the condition of the promoter providing the details of expenditure to them and the same to be verified by them, then promoter can legally charge the same from them.

**F.VIII. Direct the respondent to refund for interest free security deposit of ₹15,000/-.**

27. The authority has already dealt with the above charges in the compliant bearing no. **CR/4147/2021** titled as **Vineet Choubey V/S Pareena Infrastructure Private Limited** wherein the authority has held that the promoter may be allowed to collect a reasonable amount from the allottees under the head "IFSD". However, the authority directs and passes an order that the promoter must keep the amount collected under that head in a separate bank account and shall maintain the account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFSD amount and the interest accrued thereon, it must provide details to them. It is further clarified that out of this IFMS/IFSD account, no amount can be spent by the promoter for the expenditure for which he is liable to incur/discharge the liability under section 14 of the Act.

**F.IX. Direct the respondent to refund meter connection charges of ₹ 4,544/-.**

**F.X. Direct the respondent to refund water connection charges of ₹ 3,207/-.**

28. The authority has already dealt with the above charges in the compliant bearing no. **CR/4147/2021** titled as **Vineet Choubey V/S Pareena Infrastructure Private Limited** wherein the authority has held that the promoter would be entitled to recover the actual charges paid to the concerned departments from the complainant/allottee(s) 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 the complainant vis-à-vis the area of all the flats in this particular project. However, the complainant(s) would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads. The model of the digital meters installed in the complex be shared with allottee(s) so that they could verify the rates in the market and the coloniser.

**F.XI. Direct the respondent to refund for maintenance or operational cost of utility services of ₹ 28,703/-.**

29. The respondent in the present matter has charged operational cost of utility of ₹28,703/-. Moreover clause 4(v) of the policy, 2013 talks about maintenance of colony after completion of project: A commercial component of 4% is being allowed in the project to enable the coloniser to maintain the colony free-of-cost for a period of five years from the date of grant of occupation certificate, after which the colony shall stand transferred to the "association of apartment owners" constituted under the Haryana Apartment Ownership Act 1983, for maintenance. The



coloniser shall not be allowed to retain the maintenance of the colony either directly or indirectly (through any of its agencies) after the end of the said five years period. Engaging any agency for such maintenance works shall be at the sole discretion and terms and conditions finalised by the "association of apartment owners" constituted under the Apartment Ownership Act 1983. As per the clarification regarding maintenance charges to be levied on affordable group housing projects being given by DTCP, Haryana vide clarification no. PF-27A/2024/3676 dated 31.01.2024 it is very clearly mentioned that the utility charges (which includes electricity bill, water bill, property tax waste collection charges or any repair inside the individual flat etc.) can be charged from the allottees as per consumptions. Accordingly, the respondent cannot charge maintenance charges/ utility charges from the complainant and the respondent is directed to refund the amount of ₹28,703/-.

**F.XII. Direct the respondent to construct community sites as per guidelines of policy, 2013.**

30. The DTCP, Haryana inspects whether the said project is constructed as per the building plans and thereafter, the occupation certificate is issued. Since in the present matter the respondent has received an occupation certificate of the community building w.r.t. the said project on 20.04.2021 therefore, the complainants may approach the department for any grievance if the said sites are not constructed as per the approved layout plans.

**F.XIII. Cost of litigation-₹ 55,000/-**

31. The complainant is claiming compensation in the above-mentioned reliefs. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate



entitlement /rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

**G. Directions of the authority**

32. 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):

- a. The respondent is directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay from due date of possession i.e., 29.03.2021 till the date of offer of possession i.e., 27.04.2021 plus two months which comes out to be 27.06.2021.
- b. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoters 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.
- c. The respondent is directed to refund the amount of ₹28,703/- charged on account of maintenance or operational cost of utility services.
- d. The respondent shall not charge anything from the complainants which is not the part of the agreement or the AHP, 2013. However, holding charges shall not be charged by the promoters at any point

of time even after being part of agreement as per law settled by  
Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.

33. The complaint stands disposed of.
34. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.02.2024



**HARERA**  
GURUGRAM