



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

Complaint no. :	4132 of 2022
Date of Filing Complaint:	08.06.2022
Order Reserve On:	03.11.2023
Order Pronounced On:	16.02.2024

Ashton Ryan R/O: L-49D, 1 st floor, L-Block, Saket, Delhi-110017	Complainant
Versus	
M/s Shree Vardhmann Infraheights Pvt. Ltd. Regd. office: 302, 3 rd Floor, Indraprakash Building, 21, Barakhambha Road, New Delhi	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Nilotpal Shyam (Advocate)	Complainant
Sh. Gaurav Rawat (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 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. Unit and project 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 and delay period, if any, have been detailed in the following tabular form:

S. no.	Particulars	Details
1.	Name and location of the project	"Shree Vardhman Victoria", village Badshapur, Sector-70, Gurugram
2.	Project area	10.9687 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	103 of 2010 dated 30.11.2010 valid upto 29.11.2020
5.	Name of the Licensee	Santur Infrastructures Pvt. Ltd.
6.	RERA registered/ not registered and validity status	Registered Registered vide no. 70 of 2017 dated 18.08.2017 valid upto 31.12.2020
7.	Unit no.	H-702, Tower - H (Page no. 31 of the complaint)
8.	Unit admeasuring	1300 sq. ft. (Page no. 31 of the complaint)
9.	Date of buyer's agreement	15.07.2013 (Page no. 28 of the complaint)
12.	Basic Sale Price	Rs. 69,22,500/- (Page no 32 of the complaint)
13.	Total consideration	Rs. 76,72,500/- (as per SOA annexed with offer of possession dated 18.08.2022 on page no. 39 of reply)
14.	Total amount paid by the	Rs. 72,74,374/-

	complainants	(as per SOA annexed with offer of possession dated 18.08.2022 on page no. 39 of reply)
15.	Date of commencement of construction	13.10.2014 (As per customer ledger at page no 50 of reply)
16.	Possession clause	14(a) , The construction of the flat is likely to be completed within a period of 40 months of commencement of construction of the particular tower/ block in which the subject flat is located with a grace period of 6 months , on receipt of sanction of the building plans/ revised plans and all other approvals subject to force majeure including any restrains/ restrictions from any authorities, non-availability of building materials or dispute with construction agency/ workforce and circumstances beyond the control of company and subject to timely payments by the buyer(s) in the said complex. (Emphasis supplied)
17.	Due date of delivery of possession	13.08.2018 (Calculated from the date of commencement of construction) Note: Grace period is included as it is unqualified.
18.	Occupation certificate	13.07.2022 (Page no. 128 of reply)
19.	Offer of possession	18.08.2022 (page no. 37 of reply)

B. Facts of the complaint:

3. That the respondent vide allotment letter dated 25.12.2012 allotted unit no. H-702 proposed to be built in tower-H of the impugned project



admeasuring 1300 sq. ft. along with one parking wherein construction link plan was adopted for the purpose of the payment. The basic sale price for the impugned unit was Rs. 69,22,500/-.

4. That the complainant and the respondent entered into an apartment buyer's agreement dated 15.07.2013 for the sale of impugned unit. The agreement is a standard form of agreement which is biased, one sided, amounting to unfair trade practice as the complainant was compelled to sign on dotted lines in view of one sided standard form of agreement to sell.
5. That the complainant has already paid 14,37,750/- i.e. more than 22% of total consideration to the respondent before the execution of agreement to sell. The non-signing of the ABA would have resulted in cancellation of booking and forfeiture of earnest money i.e. 15% of basic sale price. Therefore, the complainant in view of the fear of losing the entire money paid to the respondent had no other option but to sign on dotted line of the agreement to sell.
6. That as per ABA, the respondent company agreed to sell/ convey/ transfer the apartment unit no. H-702, tower - H of the impugned project with the right to exclusive use of parking space for an amount of Rs. 79,77,500/- which includes basic sale consideration, external development charges and infrastructure development charges, preferential location charges, car parking charges electricity connection club membership but excludes interest free maintenance security deposit plus applicable taxes as per clause 2 of ABA.
7. That subsequently vide letter dated 19.03.2014, the respondent agreed to the request dated 14.12.2012 made by the complainant for deletion of the name of Mr. Ashok Kumar Mendiratta as second applicant from



the impugned unit whereby the complainant herein was designated as the sole allottee of the said unit.

8. That as per clause 14(a) of the ABA, the possession date for the impugned unit H-702 was agreed to be 13.02.2018 with additional grace period of 6 months i.e. latest by 13.08.2018.
9. That the respondent has not been able to handover the possession of the impugned unit even till date for the reasons only known to them.
10. That the complainants in pursuant to the agreement for sale made a total payment of Rs. 80,17,141/- as per the payment plan. The complainants have paid 95% of the sale consideration towards the cost of the unit no. H-702 of Tower-H in the impugned project till 2018 including costs towards other facilities. Despite the said payments, the respondent failed to deliver the possession in agreed time-frame.
11. That vide letter dated 19.03.2014 the Respondent Company granted LIC Housing Finance (hereinafter referred to as the "Bank") permission to mortgage the impugned unit. Subsequently a tripartite agreement dated 19.03.2014 executed between the complainant, the respondent and the bank whereby a loan of Rs. 64,80,000/- was sanctioned to the complainant for the purchase of the impugned unit No. H-702. Later on the bank vide letter dated 27.10.2021 certified that loan has been fully repaid by the complainant.
12. That the complainant not only repaid the sanctioned loan in a timely manner and released the impugned unit from the above-mentioned mortgage charge, but also paid around Rs. 12 lakhs towards the Interest on the said loan amount. However, even after such timely and diligent efforts by the complainant towards the impugned unit, the respondent company has failed to provide the possession of the said unit.



13. That the Respondent arbitrarily charged the complainant Interest amounting to Rs. 1,32,112/- for the delayed payment of installment due for the impugned unit during the initial stages of construction of the project. The interest charged at such higher rates is completely arbitrary.
14. That complainant also paid towards service tax for the impugned project. However, the said service tax was not payable for the period before July 2012 in accordance with the judgment of Hon'ble Delhi High Court in Suresh Kumar Bansal v. Union of India & Ors. 2016[43]S.T.R.3(Del.)
15. That the complainant was compelled to pay Rs. 1,50,000/- for open car parking charges along with applicable charges over and above the basic sale price for the impugned flat.
16. That there is more than 4 years of unexplained delay in handing over the possession by the respondent to the complainant without any sign of them meeting the future deadline. Therefore, the complainant has genuine grievance which require the intervention of the Hon'ble Authority in order to do justice with them.
17. That the complainant wishes to continue in the project while exercising his rights under Section 18 of the RERA Act. Accordingly, the complainant seeks delayed possession interest from respondent at prescribed rate for the delay period starting from the date of delivery of possession as mentioned in the ABA i.e. 13.02.2018 till the date of handing over the possession (no possession has been offered till date). The complainant had paid the full amount of consideration as per ABA within the stipulated time without any defaults in accordance with ABA

and thus entitled to the interest at prescribed rate for the unreasonable delay in delivering the possession of impugned flat by the respondent.

C. Relief sought by the complainants:

18. The complainants have sought following relief(s):

- (i) Direct the respondent to pay delay possession interest at the prescribed rate for the delayed period of handing over the possession calculated from the date of delivery of possession as mentioned in the ABA i.e., from 13.02.2018 till the actual handing over the possession of the impugned flat.
- (ii) Direct the respondent to deliver the possession of the flat.
- (iii) Direct to refund of Rs. 1,32,112/- paid towards delayed payment charges to the respondent.
- (iv) Direct the respondent to restrain from charging Rs. 3,14,401/- towards VAT with regard to the unit.
- (v) Direct the respondent to restrain from charging IFMS @ Rs. 100 per sq. ft. of super area with regard to the unit.
- (vi) Direct the respondent from charging sinking fund @ Rs. 0.25 per sq. ft. of super area per month for 12 months with regard to the unit.
- (vii) Direct the respondent from charging common electricity charges @ 0.50 per sq. ft. of super area per month for 12 months with regard to the impugned unit.
- (viii) Direct the respondent from charging labour cess @ Rs. 14 per sq. ft. of super are i.e., total Rs. 18,200 with regard to the unit.
- (ix) Direct the respondent from charging maintenance charges @ Rs. 3 per sq. ft. of super are per month for 12 months with regard to the unit.

D. Reply by respondent:



The respondent by way of written reply made following submissions:

19. The present complaint filed under Section 31 of the Real Estate Regulation and Development) Act, 2016 (hereinafter "RERA Act) is not maintainable under the said provision. The respondent has not violated any of the provisions of the Act.
20. The complainant has sought reliefs under section 18 of the RERA Act but the said section is not applicable in the facts of the present case and as such the complaint deserves to be dismissed. The operation of section 18 is not retrospective in nature and the same cannot be applied to the transactions that were entered prior to the RERA Act came in to force. The parties while entering into the said transactions could not have possibly taken into account the provisions of the Act and as such cannot be burdened with the obligations created therein. In the present case also, the flat buyer agreement (hereinafter "FBA) was executed much prior to the date when the RERA Act came into force and as such section 18 of the RERA Act cannot be made applicable to the present case. Any other interpretation of the RERA Act will not only be against the settled principles of law as to retrospective operation of laws but will also lead to an anomalous situation and would render the very purpose of the RERA Act nugatory. The complaint as such cannot be adjudicated under the provisions of RERA Act.
21. That the respondent vide its letter dated 18.08.2022 offered possession of the flat in question i.e., H-702 to the complainant calling upon him to clear the outstanding dues as mentioned in Appendixes A to C attached to the said letter and to take possession after getting the conveyance deed registered in his favour. However, the complainant has not responded to the said offer till date.



22. That a flat buyer agreement dated 15.07.2013 was executed in respect of flat H-702 between the complainant and the respondent.
23. That the payment plan opted for payment of the agreed sale consideration and other charges was a construction linked payment plan. The OP from time to time raised demands as per the agreed payment plan, however the complainant committed severe defaults and failed to make the payments as per the agreed payment plan. As on 18/08/2022 the complainant was in default of Rs. 4,31,125/- which includes basic amount, power backup charges, dual electrical meter charges; and Rs. 3,33,681/- which includes government taxes/VAT/CESS; and Rs. 1,97,626/- which includes IFM security, maintenance charges, common electricity charges, sinking fund and CGST and SGST on (B+C). Apart from these the complainant shall also be responsible to pay all charges with respect to registry of the said flat.
24. That in view of the defaults committed by the complainant, the respondent though was entitled to terminate the booking and forfeit the earnest money and other charges, however the respondent till date has not exercised the said option and has made offer of possession to the complainant with a view to provide a last and final opportunity to the complainant to make due payment. The respondent keeps reserve it right to terminate the booking and forfeit the earnest money etc. in case the complainant does not clear the dues.
25. In the said Agreement no definite or firm date for handing over possession to the allottee was given. However, clause 14 (a) provided a tentative period within which the project/flat was to be completed and application for OC was to be made to the competent authority was given. As the possession was to be handed over only after receipt of OC from DTCP Haryana and it was not possible to ascertain the period that



- DTCP, Haryana would take in granting the OC, therefore the period for handing over of possession was not given' in the agreement. In this particular case the flat/tower in question was completed in Feb 2021 and the occupancy certificate in respect thereof was applied on 23.02.2021, as such the answering respondent cannot be held liable for payment of any interest and/or compensation for the period beyond 23.02.2021.
26. The said tentative period given in clause 14(a) of the Agreement was not the essence of the contract and the allottee(s) were aware that there could be delay in handing over of possession. Clause 14(b) even provided for the compensation to be paid to the Allottee(s) in case of delay in completion of construction which itself indicate that the period given in Clause 14(a) was tentative and not essence of the contract.
27. That the tentative period i.e., 46 months for the completion as indicated in the flat buyer agreement was to commence from commencement of construction of the particular tower/block in which the flat was located on receipt of sanction of the building plans/all other approvals. The last approval required for commencement of construction being "Consent To Establish (CTE)" was granted to the project on 12.07.2014 by Haryana State Pollution Board.
28. The said tentative / estimated period given in clause 14 (a) of the FBA was subject to conditions such as force majeure, restraint/ restrictions from authorities, non-availability of building material or dispute with construction agency / work force and circumstances beyond the control of the respondent and timely payment of installments by all the buyers in the said complex including the complainant. As aforesaid many buyers / allottees in the said complex, including the complainant,



- committed breaches / defaults by not making timely payments of the installments.
29. The construction activity in Gurugram has also been hindered due to orders passed by Hon'ble NGT/State Govts. /EPCA from time to time putting a complete ban on the construction activities in an effort to curb air pollution. The Hon'ble National Green Tribunal, New Delhi (NGT) vide its order 09/11/2017 banned all construction activity in NCR and the said ban continued for almost 17 days hindering the construction for 40 days.
30. The District administration, Gurugram under the Graded Response Action Plan to curb pollution banned all construction activity in Gurugram, Haryana vide from 01/11/2018 to 10/11/2018 which resulted in hindrance of almost 30 days in construction activity at site in compliance of direction issued by EPCA vide its notification No. EPCA-R/2018/L-91 dated 27/10/2018.
31. The Environmental Pollution (Prevention and Control Authority for NCR ("EPCA") vide its notification bearing No. EPCA-R/2019/L-49 dated 25/10/2019 banned construction activity in NCR during night hours (06:00 PM to 06:00 AM) from 26/10/2019 to 30/10/2019 which was later on converted into complete 24 hours ban from 01/11/2019 to 05/11/2019 by EPCA vide its notification No. EPCA-R/2019/L-53 dated 01/11/2019.
32. The unprecedented situation created by the Covid-19 pandemic presented yet another force majeure event that brought to halt all activities related to the project including construction of remaining phase, processing of approval files etc. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-



I(A) recognised that India was threatened with the spread of Covid-19 epidemic and ordered a complete lockdown in the entire country for an initial period of 21 (twenty) days which started from March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time. Even before the country could recover from the 1st wave of Pandemic, the second wave of the same struck very badly in the March/April 2021 disrupting again all activities. Various state governments, including the Government of Haryana have also enforced several strict measures to prevent the spread of Covid-19 pandemic including imposing curfew, lockdown, stopping all commercial, construction activity. The pandemic created acute shortage of labour and material. The nation witnessed a massive and unprecedented exodus of migrant labourers from metropolis to their native village. Due to the said shortage the construction activity could not resume at full throttle even after lifting of restrictions on construction sites.

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

34. 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 submission made by the parties.

E. Jurisdiction of the authority:

35. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

36. 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

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

Section 11(4)(a)

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

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.



38. 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.

G. Entitlement of the complainant:

(i) Direct the respondent to pay delay possession interest at the prescribed rate for the delayed period of handing over the possession calculated from the date of delivery of possession as mentioned in the ABA i.e., from 13.02.2018 till the actual handing over the possession of the impugned flat.

(ii) Direct the respondent to deliver the possession of the flat.

39. 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."*

40. Clause 14(a) of the apartment buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"14.a The construction of the flat is likely to be completed within a period of 40 months of commencement of construction of the particular tower/ block in which the subject flat is located with a grace period of 6 months, on receipt of sanction of the building plans/ revised plans and all other approvals subject to force majeure including any restrains/ restrictions from any authorities, non-availability



*of building materials or dispute with construction agency/
workforce and circumstances beyond the control of company
and subject to timely payments by the buyer(s) in the said
complex.*

41. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour 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 allottee and the commitment date for handing over possession loses its meaning.
42. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builders and buyers in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or



building, as the case may be and the rights of the buyer/allottees in case of delay in possession of the unit.

43. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant(s) are seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, they 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.

44. 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.
45. 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%.



46. 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;"

47. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 14(a) of the buyer's agreement executed between the parties, the possession of the subject unit was to be handed over within 40 months from the date of commencement of construction of particular tower including a grace period of 6 months. The date of start of construction is 13.10.2014 so the due date comes out to be 13.08.2018 including grace period of 6 months as it was unqualified.
48. The respondent failed to hand over possession of the subject unit by the due date. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the



considered view that there is a 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 buyer's agreement executed between the parties.

49. As per contentions made by the complainants, the occupation certificate for the subject unit has been received on 13.07.2022 and on 18.08.2022 a letter for offer of possession along with outstanding demands has been sent to them. The demand letter included various demands that were without any calculation or justification. They sent various mail raising their queries but all went in vain. Lastly it has been contended that respondent outrightly refused to accord their demands. On the contrary the respondent contended that complainants consciously choose to ignore the demand letters/reminders.

50. The concept of valid offer of possession is to be understood first.

Validity of offer of possession

51. It is necessary to clarify this concept because after valid and lawful offer of possession, the liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, the liability of promoter continues till valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority is of considered view that a valid offer of possession must have following components:

- i. Possession must be offered after obtaining occupation certificate;*
- ii. The subject unit should be in a habitable condition;*
- iii. The possession should not be accompanied by unreasonable additional demands.*



52. In the present matter, the respondent has offered the possession of the allotted unit on 18.08.2022 i.e., after obtaining occupation certificate from the concerned department along with alleged additional demand. Therefore, no doubt that the offer of possession has been sent to the complainants but the same is accompanied with unreasonable additional demands. Thus, the offer of possession is not a valid offer of possession as it triggers (iii) component of the above-mentioned definition.

53. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of a delay from the due date of possession i.e., 13.08.2018 till the date of the actual handover of possession at the 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.

(iii) Direct to refund of Rs. 1,32,112/- paid towards delayed payment charges to the respondent.

54. As per section 2(za) of the Act, 2016 the rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges.

(iv) Direct the respondent to restrain from charging Rs. 3,14,401/- towards VAT with regard to the unit.



55. The promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, the promoter cannot charge any VAT from the allottees/prospective buyers for the period 01.04.2014 to 30.06.2017 as the same was to be borne by the promoter-developer only. The respondent-promoter is bound to adjust the said amount, if charged from the allottee with the dues payable by him or refund the amount if no dues are payable by him.
- (v) **Direct the respondent to restrain from charging IFMS @ Rs. 100 per sq. ft. of super area with regard to the unit.**
- (vi) **Direct the respondent from charging sinking fund @ Rs. 0.25 per sq. ft. of super area per month for 12 months with regard to the unit.**
56. That the promoter may be allowed to collect a reasonable amount from the allottees under the head "IFMS". 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 IFMS amount and the interest accrued thereon, the promoter must provide details to the allottee. It is further clarified that out of this IFMS/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.
57. As far as Sinking fund is concerned, the IFMS and the sinking fund are same and the respondent cannot charge for the same under different heads.



(vii) **Direct the respondent from charging common electricity charges @ 0.50 per sq. ft. of super area per month for 12 months with regard to the impugned unit.**

58. The issue w.r.t electricity charges and water connection charge etc. were dealt under Complaint no. 4031 of 2019 titled as Varun Gupta & Ors. Vs. Emaar MGF Land Ltd. The promoter would be entitled to recover the actual charges paid to the concerned departments' from the complainant/allottee on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project. The complainant would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads..

(viii) **Direct the respondent from charging labour cess @ Rs. 14 per sq. ft. of super are i.e., total Rs. 18,200 with regard to the unit.**

59. 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 26.9.1996. 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 **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 complainant is completely arbitrary and the complainant 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.

(ix) Direct the respondent from charging maintenance charges @ Rs. 3 per sq. ft. of super area per month for 12 months with regard to the unit.

60. 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 allottee 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.

H. Directions of the Authority:

61. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent is directed to handover physical possession of the subject unit within 30 days from the date of this order as occupation certificate of the project has already been obtained by it from the competent authority.
- ii. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 10.85% p.a. for every month of

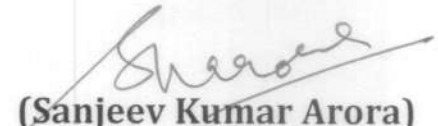


delay on the amount paid by the complainant to the respondent from the due date of possession 13.08.2018 till the date of actual handover of possession at the prescribed rate 10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

- iii. 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
- vi. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement. However, holding charges shall not be charged by promoter at any point of time even after being a part of the agreement as per Law settled by Hon'ble Supreme Court in Civil Appeal no. 3864-3889/2020 dated 14.12.2020.

62. Complaint stands disposed of.

63. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member



HARERA
GURUGRAM

Complaint No. 4132 of 2022

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.02.2024



HARERA
GURUGRAM

[Signature]
Member