

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

Complaint no. : 6936 of 2022
Date of filing : 04.11.2022
Order pronounced on: 15.05.2024

1.Rahul Arora

2.Vinod Arora

Both R/o: B-69, Vivek Vihar-1, Delhi- 110095

Complainants

Versus

St. Patricks Reality Private Limited

Regd. office: Asset 5B, Hospitality District, Delhi Aerocity,
New Delhi- 110037 0

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Gaurav Rawat (Advocate)

Shri Animesh Goyal (Advocate)

Complainants

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 to the allottee as per the agreement for sale executed inter-se them.

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 of the possession, delay period, if any, have been detailed in the following tabular form:

Sr.no.	Particulars	Details
1.	Name and location of the project	"Central Park Flower Valley"(Earlier known as Central Park III), Sector- 29, 30, 32 and 33 of village Dhunela and Berka, Tehsil Sohna, District Gurugram
2.	Project area	10.925 acres
3.	Nature of the project	Group housing colony- Independent floor
4.	DTCP license no. and validity status	54 of 2014 dated 20.06.2014 valid upto 19.06.2024 28 of 2016 dated 23.12.2016 valid upto 22.12.2021 7 of 2020 dated 29.01.2020 valid upto 28.01.2025
5.	Name of the Licensee	Chandiram Pratap Singh s/o Shivcharan and 3 others
6.	RERA registered/ not registered and validity status	Registered Registered vide no. 11 of 2020 dated 18.03.2020 Valid upto 31.12.2024
7.	Expression of interest signed on	22.12.2015 (Annexure C1 at page 34 of complaint)
8.	Application for provisional allotment	17.02.2016 (Annexure C1 at page 40 of complaint)
9.	Allotment Letter	01.10.2016 (Annexure C2 at page 57 of complaint)
10.	Unit no. as per allotment letter dated 01.10.2016	66, Ground Floor, tower F along with basement of 946 sq. ft. (approximately) with an additional cost of Rs. 2,000/- per sq. ft. for the basement (Annexure C2 at page 57 of complaint)

11.	Unit admeasuring	1230 sq. ft.
12.	Floor Buyer Agreement	Not Executed
13.	Addendum to FBA	Change in unit of complainant vide letter dated 10.11.2021 Unit no. F-58/GF in Flamingo Floors at Central Park Flower Valley (Annexure C3 at page 61 of complaint)
14.	Due date of possession	01.10.2019 <i>Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018 - Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.</i> (In view of the above-mentioned reasoning, the date of allotment letter dated 01.10.2016 ought to be taken as the date for calculating the due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 01.10.2019.)
15.	Total sale consideration	Rs.93,92,440/- (As per provisional account statement at page 60 of complaint) *Note- This cost also includes the cost of basement.

16.	Amount paid by complainants	Rs.17,49,845/- (As per provisional account statement at page 60 of complaint)
17.	Reminder sent to complainants for execution of FBA	E-mail dated 21.08.2018 and letter dated 10.02.2022 (Annexure R4 at page 72 of reply and Annexure R5 at page 73 of reply, respectively)
18.	Reminder sent to complainants for clearing outstanding dues	06.02.2017 and 15.11.2021 (Annexure R3 at page 70 of reply and Annexure R9 at page 79 of reply, respectively)
19.	Notice for cancellation	22.09.2022 (Annexure R7 at page 75 of reply)
20.	Letter of forfeiture and release of unit	10.01.2023 (Annexure R8 at page 76 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the respondent issued an advertisement announcing a project "Central Park Flower Valley" situated in villages Dhunela and Berka, Tehsil Sohna, District Gurugram, Haryana in the year 2015, claiming that the project had got building plan approval from the competent Authority.
- II. That a broker/agent of the respondent namely Ayush Regency approached the complainant, who gave several lucrative offers to the complainant and also offered an additional discount of 2 % in excess to 2% discount being offered by the company on early booking.
- III. That being lured by the attractive offer made by the agent of respondent, the complainant applied for allotment of an unit no. 66, ground floor, tower F in the respondent's project, ad-measuring 1230 sq. ft. for a total sale consideration of Rs.67,22,800/-. The said unit was proposed to be constructed in front of Flower Museum. The duly filed application form along with a cheque of Rs.4,00,000/- was

handed over by the complainants to the said broker on 14.09.2015. Thereafter, the respondent on 22.12.2015 issued "Expression of Interest" in favor of complainants. Thereafter, on 17.02.2016, the respondent received an application for provisional allotment of the said unit.

- IV. That after almost 10 months from the date of application, the respondent arbitrarily and unilaterally allotted a basement admeasuring 946 sq. ft. at an additional cost of Rs. 2,000/- per sq. ft and issued a provisional allotment letter in favor of the complainants for the basement on 01.10.2016.
- V. That the complainants sent an email dated 15.10.2016 to the respondent raising their objection regarding allotment of basement without their consent and also made a complaint regarding the additional benefit of 2 % as promised earlier. Since no reply was received on the said email, a reminder was sent to respondent vide email and speed post on 23.02.2017, whereupon for the first time vide email dated 07.03.2017 it was conveyed to the complainants that their request is under consideration.
- VI. That on visiting the project site between 2017 to 2020, neither the complainants were permitted to enter the project site nor were they shown location of their flat as to whether their flat is flower facing or not. That complainants contacted the respondent on several occasions but the respondent never gave any satisfactory response to the complainants regarding the status of the plot and were never definite about the execution of conveyance deed and delivery of the possession.
- VII. That the respondent had also assured the complainants at the time of booking that the construction of the said project will be completed within 2 years with a grace period of 6 month, however the construction of the said unit has not been completed till today. Therefore, due date of possession comes out to be 18.03.2015.

- VIII. That the respondent had sent a copy of builder buyer agreement to the complainants, however the same could not be executed by them because neither the issue pertaining to allotment of basement was resolved nor any endeavour was made to clarify the issue pertaining to additional discount of 2 % as it was promised to the complainants at the time of booking.
- IX. That finally on 04.09.2020 they were able to meet an official of the respondent company, namely Mr. Shakti Singh, who assured the complainants that a statement of account along with map of the project will be shared with the complainants. The complainants were however constrained to send a reminder through email on 12.09.2020 to the respondent asking payment details and sanctioned map of the project.
- X. That in response to the said email dated 12.09.2020, the respondent herein shared the account statement of the said unit with the complainants but did not exclude the cost of basement which had been allotted without their consent by the respondent in an arbitrary and illegal manner.
- XI. That the complainants herein were shocked to receive a letter dated 10.11.2021 from the respondent whereby they intimated about the change of unit to the complainants, and unit was changed from F-66/GF to F-58/GF. However, the said unit was not facing flowers museum as was indicated/assured earlier by the respondents. The respondent also sent a demand letter dated 15.11.2021 for a sum of Rs.11,43,853/- without settling the issue pertaining to allotment of basement at an additional cost.
- XII. That vide email dated 23.11.2021, the complainants raised a strong protest against the unilateral and arbitrary change of unit allotted to the complainants

and illegal demand of money without addressing the existing grievances of the complainants.

- XIII. That vide email dated 15.12.2021 it was communicated by the respondent, that the flat which was allotted to complainants has been re-numbered but there is no change in the orientation of the said unit, which is prima facie incorrect as there was indeed a flower museum in front of the unit allotted to the complainants which has now been removed and also the new allotted flat is West facing. The conduct of the respondent is such that it has intentionally not supplied the copy of map to the complainants despite several requests as they intended to change the layout of the project after enticing the customers like complainants by making false assurances and promises regarding the location of the unit.
- XIV. That despite of several email exchanges and personal meetings between the complainants and the officials of respondent between 12.12.2017 and March 2022, no satisfactory response was received by the complainants.
- XV. Further, vide letter dated 20.04.2022, the respondent tried to enforce it's illegal demands by insisting upon execution of "agreement to sale" without resolving the disputes regarding the change of unit, remission of 2% discount, and allotment of additional space. That vide letter dated 10.11.2021 the respondent had allotted F-58G/F to the complainants, however they insisted upon execution of agreement to sell for F-66 G/F vide letter dated 20.04.2022 which apparently shows non-application of mind and mechanical approach of the office bearers of the respondent-Builder.
- XVI. That vide letter dated 24.04.2022, the complainants pointed out the deficiencies to the respondent again ventilating their grievances regarding allotment of alternative unit and a reminder was again sent on 15.05.2022.

- XVII. That on 28.05.2022 the complainants visited the office of respondent and met Mr. Vikas Singh. After due deliberation it was agreed by Mr. Vikas Singh that a copy of the site map will be shared with the complainants along with statement of accounts and fresh builder buyer agreement of unit no. F-58/GF. A written intimation was shared by the complainants with Mr. Vikas Singh on 28.05.2022 and a reminder was also sent on 3.06.2022, but no response was received from the respondents.
- XVIII. That vide emails dated 03.06.2017 and 17.06.2017, respondents acknowledged the receipt of emails dated 28.05.2022 and 03.06.2022 from complainants, but neither the map nor the statement of accounts was shared with the complainants. The fresh builder buyer agreement of the new unit was also not sent by the respondent.
- XIX. That the respondent herein arbitrarily and illegally cancelled the allotment of the complainants vide email communication dated 28.09.2022 for non-execution of the builder buyer agreement without appreciating that they themselves failed to supply the copy of fresh builder buyer agreement of unit no. F-58/GF. That an amount of Rs. 17,49,845/- had been paid by the complainants.
- XX. That the payment plan was designed in such a way to extract maximum payment from the buyers. The complainant approached the respondent and asked about the status of possession and also raised objections towards non-completion of the project
- XXI. That the complainants being an aggrieved person filing the present complaint under Section 31 with the Authority for violation/ contravention of provisions of this Act. As per Section 18 of the Act, the promoter is liable to pay delay possession

charges to the allottees of a unit, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.

XXII. The complainant after losing all the hope from the respondent, having their dreams shattered and having basic necessary facilities in the vicinity of the project and also losing considerable amount, are constrained to approach this Hon'ble Authority for redressal of their grievance.

C. Relief sought by the complainant

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

- i. Direct the respondent not to cancel the unit of the complainants.
- ii. Direct the respondent to handover the symbolic and constructive possession of the said unit in question with all amenities and specifications as promised, in all completeness without any further delay and after completion of the same to lease out the unit in question of the complainant.
- iii. Direct the respondent to pay the interest on total amount paid by the complainants at the prescribed rate of interest as per RERA, from due date of possession till the handing over of possession.
- iv. Direct the respondent to pay the amount due to the complainants from the respondent on account of interest as per the guidelines laid in RERA, 2016.
- v. Direct the respondent to execute builder buyer agreement in respect of the unit in question in favor of the complainants.
- vi. Direct the respondent not to force the complainants to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a pre-condition for signing the conveyance deed.
- vii. Direct the respondent to provide exact layout plan of the said unit.
- viii. Direct the respondent not to charge anything irrelevant which has not been agreed between the parties like labour cess, electrification charges, maintenance charges, etc. which in any case is not payable by the complainants.
- ix. Direct the respondent to restrain from raising fresh demands for payment under any head as the complainants have already made the payment as per the payment plan.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds: -

- a. That in September 2015, the complainants approached the broker AAYUSH REGENCY and expressed their interest in booking of an independent floor (ground floor) in the project of the respondent by depositing a sum of Rs. 4,00,000/- by way of two drafts amounting to Rs. 2,00,000/- each bearing no. 264188 and 264187 both dated 14.09.2015.
- b. That Clause (e) of Expression of Interest clearly stipulates that there can be variation in the area of the floor and if such variations is not acceptable to the complainants, they can claim refund of the actual amount paid by them. Therefore, the complainants knew from the day one that there may be variation in the area of the floor.
- c. That the complainants signed and submitted the booking form for provisional allotment of a residential independent floor in "Central Park Flower Valley Project" (Earlier Known as Central Park - III) of respondent at Sohna, Gurugram on 17.02.2016. The booking form contained detailed terms and conditions, forming a binding contract between the parties upon its acceptance by the respondent, in case there is no other overriding agreement between the parties. In pursuance of this booking form/binding contract, respondent had finally issued the provisional allotment letter to the complainants. However, the complainants started to default in making the payment and terms of the allotment from very beginning.

- d. That the respondent issued a letter dated 01.10.2016, provisionally allotting the Ground floor on Plot no. 66, Block F, having approximate saleable area of 1230 square feet. Along with the ground floor, respondent also allotted a basement of 946 sq. ft., that too only at the cost of Rs.2000/- per sq. ft. to the complainants, with the option as mentioned in the allotment letter i.e. if the complainants are not agreeable to take the basement, they can inform the same to the respondent in writing for refund of their payment within 15 days and the respondent would refund the same with 12% interest per annum which was a fair and equitable return. However, the complainants never requested the respondent to process refund and instead of it started demanding discount of 2% on BSP which was never agreed upon between the parties.
- e. That before the allotment in the project, lot of customers requested to add the basement in the building for adding the value in the property as same can be utilized for varied purposes. Because of such requests, the respondent had introduced basements in all the buildings with independent floors for the benefit of the customers having ground floors.
- f. That however, keeping in mind that not all allottees would want to avail of this facility, the respondent offered its allottees, including the complainants herein, both the options i.e., to take the basement, or in case they do not want the basement, then the respondent agreed to refund the entire sum collected by it with simple interest @12% p.a.
- g. That such letters offering basements were sent to 177 number of allottees. Out of 177 allottees, 160 number of allottees happily accepted the additional basement and made payment towards the same. Further, 17 allottees wrote to the respondent, requesting that they would only want to continue with the floor

- only and do not want the additional facility of basement, respondent acceded to the said request, and 17 number of allottees continued with their original investment without the basement.
- h. That the complainants never requested for refund of the deposited money, rather accepted the allotment of the ground floor along with basement which is clear from the subsequent act and conduct of the complainants. However, later on the complainants started raising false new issues regarding location of their floor. This clearly shows that complainants were never interested to make the payments as per the agreed payment plan.
- i. That when the respondent issued the provisional allotment letter dated 01.10.2016 to the complainants, respondent gave the same option to the complainants as well, that in case the provisional allotment was not suitable for the complainants, they could write to the respondent within 15 days of receipt of the provisional allotment letter, and the respondent would have refunded the entire amount paid by the complainants till that date, with interest @12% p.a.. That two copies of agreement were also sent to complainants along with aforesaid letter dated 01.10.2016 wherein respondent has asked the complainants to return the signed copies of agreement within a maximum period of 30 days along with their option regarding basement.
- j. That complainants vide their email dated 15.10.2016 i.e. exactly within a period of 15 days replied that complainants are interested in ground floor only (which is approx.. 1230 sq. ft.) and the same is enough for his family. In addition to the aforesaid complainants kept on asking for discount of 2% on BSP which was never agreed upon between the parties.

- k. Thereafter, payment reminders were sent to complainants on 06.02.2017 via email wherein it was informed to complainants that a payment of Rs.17,49,845/- has been received from complainants and an amount of Rs.11,43,854/- is still outstanding which is attracting interest for period of delay. However, in-spite of issuance of aforesaid letter, no further payment was made by complainants.
- l. That vide email dated 21.08.2018 it was informed to complainants by respondent that the respondent has not received back the signed copies of floor buyer agreement and requested the complainants to submit the same at the earliest to address mentioned therein.
- m. That letter dated 10.02.2022 was sent by respondent to the complainants along with fresh copies of agreement for the changed unit i.e. F-58 (earlier it was F-66) asking the complainants to sign and return the original signed two copies of agreement as the same were required for registration of the said agreement after coming into force of the provisions of the Act and its rules made by Haryana Government. It is pertinent to mention here that only the number of unit was changed and the physical location of the unit remains the same. The location of unit was confirmed by CRM team vide email dated 30.06.2022 with a request to complainants to sign buyers agreement and provide the same to the respondent to proceed further.
- n. That a final reminder dated 21.04.2022 was sent to the complainants by the respondent for completion of agreement registration with respect to the changed unit i.e. F-58 (earlier it was F-66) and to clear its outstanding dues within a period of 10 days i.e. by 30.04.2022 otherwise the booking made by complainants is liable to be cancelled. However, despite umpteen reminders and notices from the respondent, neither did the complainants make any payment,

- nor did they execute the floor buyer agreement. The complainants had the mala fide intention from the beginning of the allotment to wriggle out of their contractual obligations by making false assertions and claims as property market was going down during that period.
- o. That the respondent was constrained to cancel the provisional allotment made in favour of the complainants, vide its email dated 22.09.2022, i.e., after giving enough opportunity and after waiting for approximately 6 years. The CRM team of respondent have emailed the complainant and informed that the unit stands cancelled on account of non-execution of builder buyer agreement and the respondent will process the balance amount after forfeiture as per duly signed application form.
- p. That the complainants are bound by the terms and conditions of the clause 4.1 of the terms of application form, the respondent is, upon cancellation of the allotment, entitled to forfeit or deduct the EMD (Earnest Money Deposit), any interest paid or due or payable, other charges including holding charges, brokerage and other amount of non-refundable nature and refund the balance amount if any to the complainants. Accordingly, vide letter dated 10.01.2023, a refund cheque for Rs. 9,31,861/- has been sent to the complainant after forfeiture of 8,17,984/-.
- q. That the present complaint is bad for misjoinder and non-joinder of necessary parties. As alleged by the complainants that they have approached respondent through Ayush Regency who had given several lucrative offer to the complainant. Therefore, in the present complaint Ayush Regency should be made as a necessary and proper party to revert all the alleged averments made in the complaint by the complainants pertaining to Ayush regency.

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

E. Written submissions of the complainants

9. That the complainant filed the written submissions on 10.01.2024 and made the following submissions:
 - i. That the RERA Act, 2016 came into force on 01.05.2016 and on that date the respondent had not received the completion certificate from the concerned authorities and thus, respondent was under a legal obligation to get the project registered with the Authority within three months from 01.05.2016, however the respondent has failed to do the same.
 - ii. That the quantum of delay is to be determined in light of the aforesaid aspects and not merely from the date of start of construction and the purported date of the start of construction. No explanation whatsoever has been offered for the period between the date of booking and date of start of construction and for the period between the date of offer of possession till present.

F. Jurisdiction of the authority

10. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

F.I Territorial jurisdiction

11. 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.

F.II Subject matter jurisdiction

12. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

13. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

G. Findings regarding relief(s) sought by the complainant:

G.I Direct the respondent not to cancel the unit of the complainants.

14. The complainants signed an expression of interest dated 22.12.2015 with respect to ground floor, admeasuring 1230 sq. ft. in the project of the respondent namely, "Central Park Flower Valley". Further, an application form was signed by both the parties on 17.02.2016. Thereafter, a provisional allotment letter dated 01.10.2016 was sent to the complainants wherein they were allotted unit no. 66, ground floor, tower F along with basement of 946 sq. ft. with an additional cost of Rs. 2,000/- per

sq. ft. for the basement in the project "Central Park Flower Valley" of the respondent/builder for a total consideration of Rs.93,92,440/-. The provisional allotment letter dated 01.10.2016 also mentioned that in case, the said allotment does not suit the complainants, they shall inform the same to the respondent in writing within a period of 15 days and the respondent shall refund the entire amount paid by the complainants along with interest @ 12% per annum.

15. The complainants in due compliance of the provisional allotment letter dated 01.10.2016, sent an e-mail dated 15.10.2016 to the respondent stating that the ground floor admeasuring 1230 sq. ft. is sufficient for their family and the basement being offered with an additional cost of Rs.2,000/- per sq. ft. is an additional liability and burden for the complainants. Therefore, the complainants are merely interested in the ground floor and not in the basement. Further, vide the same e-mail dated 15.10.2016, the complainants also requested the respondent to grant 2% discount in the basic sale price as promised by it at the time of initial booking.

16. Thereafter, the respondent sent a letter dated 10.11.2021 to the complainants stating that the residential floors have been re-numbered without any change in the location, direction or orientation of the existing and allotted plots/floors in the project. Consequently, the complainants were reallocated unit no. 58, ground floor, tower F in the project "Flamingo Flowers" in Central Park Flower Valley. The said reallocation of unit of the complainant was also objected to by the complainants. However, vide e-mail dated 15.12.2021, the complainants were reassured that there is no change in location of the unit. The respondent again vide e-mail dated 07.03.2017 asked the complainants if they wish to take the basement along with the ground floor, or the ground floor only. Subsequently, the complainants, through

their written correspondence, unequivocally communicated their sole interest in acquiring the ground floor unit without the additional basement space.

17. However, despite such clear and consistent declarations by the complainants, the respondent persistently sought to include the basement area in the transaction, culminating in the issuance of a builder-buyer agreement encompassing said space. Therefore, the complainants refused to sign the said builder buyer agreement. Notwithstanding the complainants' refusal to execute the agreement, the respondent continued to press for its execution and pursued payment for outstanding dues. Upon the complainants' non-compliance, the respondent unilaterally terminated the allotment of the unit, accompanied by the forfeiture of Rs. 8,17,984/- against the total amount paid by the complainants amounting to Rs.9,31,861/-.

18. After going through all the written as well as verbal submissions of both the parties, the Authority is of the view that the since the very inception, complainants were interested in allotment of ground floor unit only, i.e., without basement in terms of the expression of interest dated 22.12.2015 or application form dated 17.02.2016 and they clarified the same to the respondent within the time period of 15 days of the provisional allotment letter. Therefore, if we go by the letter and spirit of the provisional allotment letter, the respondent was under an obligation either to allot a unit without basement, or refund the amount paid by complainants along with interest @ 12% per annum, since the complainants clearly expressed that they are interested only in ground floor unit and not the basement. However, acting contrary to the same, the respondent sent various reminder letters to the complainants either to get the builder buyer executed pressurising the complainants to take the ground floor unit with basement, or asking the

complainants to clear the outstanding dues. As the complainants did not pay heed to such reminders, the respondent cancelled the unit of the complainants on 22.09.2022, by forfeiting Rs. 8,17,984/- out of total amount paid by complainants amounting to Rs.17,49,845/-. The malafide intent of the respondent is manifest from the fact that builder buyer agreement was not amended and reminders were issued again and again to the complainants to execute the same agreement including the basement area.

19. Consequently, the cancellation of the unit by the respondent stands in contravention of the complainants' explicit intentions and lacks validity. Therefore, the said cancellation letter dated 22.09.2022 is not valid and hereby, liable to be quashed.

G.II Direct the respondent to handover the symbolic and constructive possession of the said unit in question with all amenities and specifications as promised, in all completeness without any further delay and after completion of the same to lease out the unit in question of the complainant.

G.III Direct the respondent to pay the interest on total amount paid by the complainants at the prescribed rate of interest as per RERA, from due date of possession till the handing over of possession.

G.IV Direct the respondent to pay the amount due to the complainants from the respondent on account of interest as per the guidelines laid in RERA, 2016.

G.V Direct the respondent to execute builder buyer agreement in respect of the unit in question in favor of the complainants.

G.VI Direct the respondent not to force the complainants to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a pre-condition for signing the conveyance deed.

20. 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.

21. Vide proceedings dated 15.11.2023 and subsequently on 10.04.2024, the Authority issued directives to the respondent, seeking clarification through written submissions regarding whether the basement formed part of the original

sanctioned building plan or constituted a subsequent alteration. Regrettably, the respondent failed to comply with the orders issued by the Authority. Consequently, it is apparent that he intends to conceal the true facts of the matter.

22. In light of these findings, the Authority opines that the respondent is obligated to deliver possession of the reallocated unit, F-58/GF, without basement, to the complainants. Furthermore, in case third-party rights have been established concerning the same or the said unit cannot be sold without the basement, the respondent is directed to assign an alternative unit of equivalent dimensions within the same project and at the original price agreed with the complainants. Post the said allotment, the builder buyer agreement shall also be executed between the parties.
23. Further, as far as the issue as to additional discount of 2% on BSP is concerned, Authority is of the view that there is no documentary evidence substantiating that additional discount was being promised by the respondent to the complainants. The complainants pleads that the agent of the respondent, i.e., "Aayush Regency" promised the complainants of the said additional 2% discount on the BSP. In response to the same, an objection was raised by the respondent with respect to non-joinder of "Aayush Regency" as necessary party to the present complaint. However, the complainants took no step further to implead "Aayush Regency" as necessary party. Therefore, the evidence presented does not establish any undertaking by the respondent to provide such concession, thereby absolving it of accountability in this regard.
24. Herein, the complainants intend to continue with the project and are seeking delay possession charges as provided under the Proviso to Section 18(1) of the Act. Section 18(1) Proviso reads as under.

"Section 18: - Return of amount and compensation

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

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

25. **Due date of possession:** It is observed by the Authority that neither any specific time period with respect to handing over the possession of the allotted unit to the complainants had been prescribed, nor had the builder buyer agreement been executed between the parties. The due date is calculated to be 3 years from the date of provisional allotment (01.10.2016) in terms of the "**Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018**". Accordingly, the due date of possession comes out to be 01.10.2019.

26. **Admissibility of delay possession charges at prescribed rate of interest:** -The complainant are seeking delay possession charges however, Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules, ibid. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

27. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, ibid has determined the prescribed rate of interest. The rate

of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

28. 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., 15.05.2024 is @ 8.85 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

29. 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."*

30. Therefore, interest on the delay payments from the complainant 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.

31. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The due date of handing over possession is deemed to be 01.10.2019. Occupation certificate has also not been obtained by the respondent from the concerned authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical

possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities to hand over the possession within the stipulated period. Therefore, the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of valid offer of possession or actual handover, whichever is earlier. Further, the respondent is directed to obtain occupation certificate from the concerned authority and offer possession of the unit within a period of two months after receiving the occupation certificate.

32. 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.***

G.VII Direct the respondent to provide exact layout plan of the unit.

33. As per Section 19(1) of the Act, the allottees are entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in this Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Therefore, in view of the same, the respondent is directed to provide details i.e., actual area of the allotted unit in question to the complainants within a period of 30 days from the date of this order.

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

G.IX Direct the respondent to restrain from raising fresh demands for payment under any head as the complainants have already made the payment as per the payment plan.

34. Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction

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

35. As far as external electrification charges are concerned, the respondent cannot collect the same from the allottees while issuing offer of possession letter of a unit even though there is any provision in the builder buyer's agreement to the contrary as has already been laid down in complaint bearing no. 4031 of 2019 titled as "**Varun Gupta Vs. Emaar MGF Land Limited**" decided on 12.08.2021.
36. The respondent is allowed to collect a reasonable amount from the complainants on account of the maintenance charges with respect to IFMSD as has already been laid down in complaint bearing no. 4031 of 2019 titled as "**Varun Gupta Vs. Emaar MGF Land Limited**" decided on 12.08.2021. However, the authority directs that the promoter must always keep the amount collected under this head in a separate bank account and shall maintain that account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFMSD amount and the interest accrued thereon, the

promoter must provide details to the allottee. It is further clarified that out of this IFMSD/IBMS, no amount can be spent by the promoter for the expenditure it is liable to incur to discharge its liability and obligations as per the provisions of Section 14 of the Act.

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

H. Directions of the Authority:

38. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under Section 34(f) of the Act of 2016:

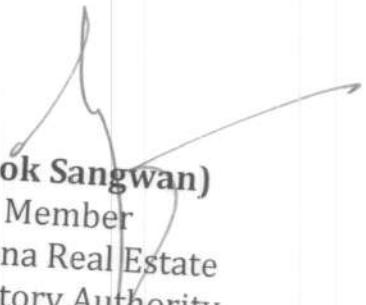
- I. The respondent is directed to deliver possession of the reallocated unit, F-58/GF, without basement, to the complainants. However, in case third-party rights have been established concerning the same or the same unit cannot be sold without basement, then the respondent is directed to assign an alternative unit of equivalent dimensions within the same project and at the original price agreed with the complainants. Both the parties are also directed to execute the builder buyer agreement subsequently.
- II. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e., 10.85% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 01.10.2019 till expiry of 2 months from the date of offer of possession or actual handover, whichever is earlier as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*. The arrears of interest

- accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the Rules, *ibid*.
- III. 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 as per Section 2(za) of the Act.
- IV. The respondent is directed to handover physical possession of the unit to the complainants within a period of two months after receiving occupation certificate from the concerned authority.
- V. The respondent is directed to provide details i.e., actual area of the reallocated unit to the complainants within a period of 30 days from the date of this order.
- VI. 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.
- VII. The respondent is not entitled to charge labour cess from the complainants as it is the respondent builder who is solely responsible for the disbursement of said amount.
- VIII. The respondent cannot charge electrification charges from the allottees while issuing offer of possession letter of a unit even though there is any provision in the builder buyer's agreement to the contrary.
- IX. The respondent is allowed to collect a reasonable amount from the complainants on account of the maintenance charges with respect to IFMSD as has already been laid down in ***complaint bearing no. 4031 of 2019***

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

- X. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
39. Complaint stands disposed of.
40. File be consigned to registry.

Dated: 15.05.2024


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