BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no : 2583 of 2023
Date of filing: 13.06.2023
Order pronounced on: 28.03.2024

1.Parikshit Kohli
2.Rishu Kohli
R/o: 56A, Pocket C, Gangotri Enclave, Alaknanda, New Delhi- 110019 **Complainants**

Versus

St. Patricks Reality Private Limited
Regd. office: The Median, central Park Resorts,
Off Sohna Road, Sector-48, Gurugram -122018, Haryana **Respondent**

CORAM:
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Sh. Garvit Gupta (Advocate) Complainants
Sh. Venkat Rao (Advocate) Respondent

ORDER

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

S. no.	Particulars	Details
1.	Name and location of the project	Central Park Flower Valley
2.	Project area	10.925 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	84 of 2014 dated 09.08.2014 valid up to 08.08.2024
5.	RERA registered/ not registered and validity status	**Registered** Registered vide no. 150 of 2017 dated 28.08.2017 Valid upto 31.07.2022
6.	Unit no.	1202, tower-F, 12th floor (page 49 of complaint)
7.	Unit area admeasuring	1590 sq. ft. super area (page 49 of complaint)
8.	Provisional allotment letter	14.04.2017 (page 38 of complaint)
9.	Builder buyer agreement	04.07.2017 (page 47 of complaint)
10.	Possession Clause	**7.1 Possession** ***The Company shall endeavor to offer the possession of the said Apartment to the Allottee(s) within a period of 36 months with a grace period of another 6 months from the date of this Agreement subject to timely payment of sale price, other charges as per Details of Payment (Annexure-1), Payment Plan (Annexure-2)*** *and all other payments as per terms of this Agreement including payment of interest by the Allottee(s). In case of default in aforesaid payments by the Allottee(s) or violation or noncompliance of any term of this Agreement, the Allottee(s) shall not be entitled to claim and the Company shall not be bound to give the possession of the said Apartment as per*

		this clause. Further the handover of the possession of the said Apartment in accordance of this clause shall be subject to Force Majeure circumstances as defined in clause 19 of this Agreement or directions of Government/ statutory authorities or any change in the laws, rules and regulations which are beyond the control of the Company.
11.	Due date of possession	04.01.2021 (calculated from the date of execution of BBA with 6 months of grace period allowed in lieu of covid-19)
12.	Basic Sale Consideration	Rs.84,38,925/- (as per BBA page 49 of complaint)
13.	Amount paid by complainant	Rs.1,32,01,257/- (as per annexure C6 of complaint)
14.	Occupation certificate	13.01.2023 (page 96 of reply)
15.	Offer of possession	18.02.2023 (page 99 of reply)
16.	Possession takeover letter	26.05.2023 (page 126 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions: -

I. That the complainants received a marketing call from the office of the respondent in the month of August 2016 for booking in a residential project. The complainants were attracted to the respondent's project due to its publicity through various means like brochures, posters, advertisements, etc. The marketing staff also assured timely delivery of the unit. The respondent specifically assured that since the booking was made by the complainants after the enactment of the Real Estate (Regulations and Development) Act, 2016, all dealings and correspondences would be done in accordance with the provisions of the said Act and the obligations imposed on a promoter under the said Act.

II. That the respondent requested 15% of the total sale consideration as an advance payment at the time of allotment. The demand was illegal as it

contravened Section 13 of the Act, 2016 vide letter dated 27.02.2017. Subsequently, the complainants made the required payment, and the respondent issued a provisional allotment offer letter dated 14.04.2017, in which apartment no. 1202, tower F admeasuring 1590 sq. ft. was allocated.

III. That the complainants protested against the allotment letter and informed the respondent that, following the enactment and enforcement of the Act, 2016, selling the unit to them based on the 'super area' was not permissible. The respondent informed the complainants that due to a clerical error, the provisional allotment letter incorrectly mentioned super area instead of carpet area, and reassured that necessary changes would be made in the agreement.

IV. Subsequently, the complainants made additional payments to the respondent. Upon receiving a copy of the buyer's agreement, they discovered it to be a completely one-sided document with unilateral, arbitrary, and legally unsustainable terms heavily favouring the respondent to the detriment of the purchasers, including the complainants. The agreement proposed transferring the unit based on super area instead of carpet area, contrary to previous representations and in violation of the Act, 2016. Furthermore, the agreement contained provisions allowing the respondent to charge interest at the prescribed rate for delayed payments by the complainants, while offering only a nominal compensation of Rs.5/- per sq. ft. per month for delays in possession beyond the stipulated period.

V. That the buyer's agreement, with its one-sided and illegal provisions, reflected an abuse of dominant position by the respondent, disregarding the balance intended by the Real Estate (Regulation and Development) Act, 2016.. Having already paid a substantial amount totalling Rs.13,22,801/- before executing the agreement on 04.07.2017, the complainants felt compelled to accept the unfair

terms, leaving them with no alternative but to agree to the lopsided conditions presented.

VI. That the complainants had made a payment of Rs.1,32,01,257/- out of the total sale consideration amount of Rs.1,07,83,255/-, exceeding 100% of the sale consideration, strictly adhering to the terms of the allotment and the payment plan. The complainants did not default on any timely payments towards the instalment demands.

VII. That despite having signed the buyer agreement dated 04.07.2017, which contained terms highly favourable to the respondent's preferences, the respondent failed miserably to fulfill its obligations outlined within. As per Clause 7.1 of the agreement, the respondent was obligated to hand over possession of the unit within 36 months from the date of executing the agreement. Hence, as the due date of delivery of possession as per the agreed terms of the buyer's agreement lapsed on 03.07.2020.

VIII. That the respondent after delay of more than 2 years, sent an offer of possession dated 18.02.2023 to the complainants. The respondent vide offer of possession dated 18.02.2023 demanded several illegal charges in contradiction to the provisions of the Act, 2016. The total cost of the unit which was agreed at Rs.1,07,83,225/- was unilaterally increased to Rs.1,39,37,772/- thereby increasing the total sale consideration by a margin of 30%. The respondent without any justification unilaterally increased the super area of the unit from 1590 sq. ft. to 1789 sq. ft. which burdened the complainants with an additional amount of Rs.11,56,784/- (Rs.10,56,193/- towards the additional BSP for change in area; Rs.59,700/- towards the additional PLC for change in area and Rs.40,891/- towards the additional EDC/IDC for change in area).

IX. Furthermore, the respondent conveniently failed to intimate the complainants and failed to take consent of the complainants/allottees about the alleged

increase in the super area of the unit and it was only in the year 2023 that the respondent informed the complainants about the same for the very first time. Clause 6.4 of the agreement is absolutely arbitrary and void and is to completed ignored in order to ascertain the enforcement of the provisions of law. As per the said clause, the respondent has refused to even seek consent from the allottees, if the change in the area results upto +-12.5% and has very conveniently bifurcated the said clause by stating that it would seek consent from an allottee only if the area is more than +-12.5.%. However, since, the increase in area was exactly 12.5%, hence no consent or even intimation was given to the complainants about the said alleged increase. The respondent acted in strict violation of Section 14 of the Act, 2016 which mandates a promoter to seek consent from the allottee in case of change in the layout of a unit.

X. That there have been no changes in the building plans to date as per the list of uploaded documents by the respondent at the time of registration of the project available on the website of the Authority, the latest building plan was uploaded on 18.03.2020 which states that there has been no revision of the building plans after the date of uploading and also the respondent has not intimated complainants or other allottees of any revisions.

XI. Moreover, the respondent unlawfully demanded Rs.9,49,512/- as escalation charges without explanation or prior notice, violating Clause 1.13 of the buyer's agreement.

XII. Also, the respondent vide its offer of possession demanded Rs.3,50,000/- towards the club membership charges which were not payable by the complainants for the sole reason that as on date, no such club exist on the project site. In the absence of the facility of the club, the complainants could not have been forced to make the payment towards the said demand.

XIII. That the respondent vide its offer of possession dated 18.02.2023 demanded Rs.44,725/- for water connection charges and Rs.2,14,680/- for electricity facility charges in the offer of possession, which were already included in the basic sale price paid by the complainants and other allottees. These services, like electrification and sewage disposal, are typically covered within the basic sale price, and the respondent cannot request additional payments without justification or proper breakdown.

XIV. That the respondent vide its offer of possession dated 18.02.2023, demanded Rs.4.40/- per sq. ft. plus applicable taxes per month as well as initial 12 months maintenance charges amounting to Rs.1,11,462/- from the complainants. Furthermore, the respondent had illegally demanded Rs.9,950/- towards the additional IFMSD for change in area and the same could not have been done by the respondent. Moreover, the said charges have been demanded from 01.05.2023 whereas the same should be computed from the actual date of handover of the unit. Also, the unit was not ready and was not in habitable position which is evident from a perusal of para 7 of the offer of possession wherein it has been stated by the respondent that it would take approximately 60 days to handover the apartment after the receipt of the entire payment. Thus, from all angles, the said demand of maintenance charges from the respondent is unreasonable, illegal and is unsustainable in the eyes of law.

XV. That the respondent demanded 'covered' car parking charges to the tune of Rs.3,00,000/-. Such covered car parking facility was provided by the builder to the complainants in the basement of the project in question. That car parking facility falls within the ambit of the definition of common areas' and is not part of the floor area ratio assigned to a developer. Thus, a builder can sell only a 'garage' as defined under the provisions of Act, 2016 and not a parking space located in the basement as the same forms part of the common areas.

XVI. That the respondent while computing the delay interest payable to the complainants unilaterally took into consideration certain events which does not affect nor affected the implementation of the project. The said calculation of Rs.5,96,491/- was wrong and the complainants are not bound by the same. The complainants are entitled to interest at the prescribed rate as per RERA Act, 2016 read with Haryana RERA Rules, 2017. On the receipt of the offer of possession, the complainants contacted the respondent vide their email dated 02.03.2023 and confronted them about the illegal imposition of charges. Despite assurances by the representatives of the respondent that they would resolve the queries of the complainants and would delete the illegal charges, they failed to do the same. The complainants again vide their email dated 18.03.2023 requested the respondent to issue a revised offer of possession but the respondent failed to do the same.

XVII. That the complainants had made the payment under protest thereby reserving their rights which the law of the land guarantees to them and accordingly, the respondent issued the possession handover letter only on 26.05.2023. The actual physical possession of the unit was done on 27.05.2023.

XVIII. The respondent/promoter has been acting not only in contrary to the terms of the agreement which were drafted by the respondent itself but also on account of its own acts and has reduced the complainants at its mercy wherein and the complainants' questions have been left un-answered and the respondent/promoter is continuing with its illegal acts acting strictly in violation of the provisions of the Act, 2016. The respondent in utter disregard of its responsibilities has left the complainants in the lurch and the complainants have been forced to chase the respondent for seeking relief. Thus, the complainants have no other option but to seek justice from this Hon'ble Authority.

XIX. That the cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations. The cause of action arose when the respondent failed to handover possession and compensation for the delay on its part and when the respondent refused to make payment towards the delayed possession charges along with refund of other illegal charges which has been paid by the complainants under protest to the respondent.

C. Relief sought by the complainant

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

i. Direct the respondent to pay delay possession charges.
ii. Direct the respondent to execute conveyance deed.
iii. Direct the respondent to refund illegal charges of Rs.3,00,000/- paid by complainants toward covered car parking.
iv. Direct the respondent to refund the illegal charges of Rs.3,50,000/- paid by the complainants towards covered club membership charges.
v. Direct the respondent to refund the illegal charges of Rs.10,56,193/- paid by the complainants towards additional BSP for change in Area.
vi. Direct the respondent to refund the illegal charges of Rs.40,891/- paid by the complainants towards Additional EDC/IDC.
vii. Direct the respondent to refund the illegal charges of Rs.59,700/- paid by the complainants towards Additional PLC for Change in Area.
viii. Direct the respondent to refund the illegal charges of Rs.9,950/- paid by the complainants towards Additional IFMSD for Change in Area.
ix. Direct the respondent to refund the illegal charges of Rs.44,725/- paid by the complainants towards Water Connection Charges.
x. Direct the respondent to refund the illegal charges of Rs.2,14,680/- paid by the complainants towards Electricity Facility Charges.
xi. Direct the respondent to refund the illegal charges of Rs.9,49,512/- paid by the complainants towards Escalation Charges.
xii. Direct the respondent to refund the illegal and premature annual maintenance charges of Rs.1,11,462/- paid by the complainants towards Interest charges.
xiii. Direct the respondent to refund the excess taxes of Rs.2,42,944/- paid by the complainants towards illegally enhanced cost of the unit.

xiv. Direct the respondent to refund the additional taxes charged and collected from the complainants under the garb and guise of illegal and wrongful increase in total sale consideration of the unit.

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 2016, the complainants discovered the project namely 'Lake Front Towers' *(now known as "Aqua Front Towers")* in Central Park Flower Valley residential project developed by the respondent on a 10.925 acre land in Gurugram, Haryana. After being content with the project's specifications, the complainant booked an apartment vide expression of interest dated 01.10.2016 and paid an amount of Rs.5,00,000/- based on their assessment for further registration.

b. That as per clause (e) of the expression of interest dated 07.09.2016, the complainants acknowledged that any variation in the apartment's area at booking would require payment for excess or shortfall. Subsequently, on 03.03.2017, the complainants submitted an application for provisional allotment in the respondent's project. The complainants were fully aware of and agreed to the terms of the application without objection. As per clause 2 of the application for provisional allotment, the complainants voluntarily agreed to pay various charges including those for electricity, water supply connection, usage charges, registration amount, taxes, fees, and other applicable charges, in addition to the basic sale price and specified charges.

c. That the respondent vide allotment letter dated 14.04.2017, allotted an apartment bearing no. 1202, tower F, in the project admeasuring super area of 1590 sq. ft. under the possession linked payment plan for a basic sale

consideration of Rs.5307.50/- per sq. ft. along with preferential location charges of Rs.300/- per sq. ft. in the said project. Further, on 04.07.2017, an apartment buyer agreement was executed for the subject unit having Basic sale price of Rs.84,38,925/-, excluding the preferential location charges and all other charges mentioned and agreed by the complainants under the agreement.

d. That on 19.01.2018, the respondent vide intimation of payment due letter called upon the complainants to pay the instalment of Rs.33,38,812/- payable on or before 17.02.2018, against the subject unit. However, the complainants delayed the said instalment.

e. As per clause 7.1 of the agreement, the possession of the apartment was proposed to be offered within 36 months, with a grace period of 6 months from the date of the agreement, subject to other agreed terms and conditions, including timely payment of instalments and force majeure circumstance. Due to the impact of COVID-19 and the construction ban by NGT and EPCA until 2021, along with other reasons beyond the control of the respondent company, the possession of the apartment was to be offered on or before 14.12.2021, with 6 months' extension on account of Covid-19, 3 months extension on account of second wave of Covid-19 and an additional 70-day extension when construction was banned by NGT and EPCA.

f. That the complainants were aware, agreed that the size of the apartment stated in the application and agreement was tentative and subject to change upon final completion, with any additional cost to be paid by them. Despite this understanding, the complainants later chose to dispute this fact with malicious intent to evade their responsibility. As per clause 1.10 of the agreement, the complainants acknowledged that the super area of the apartment was subject to variation, either an increase or decrease, at final completion or when obtaining the occupation certificate. Additionally, clause 6.4 of the agreement

granted the respondent the right to adjust the area of the apartment by up to +/-12.5%, with a provision for the complainants to dispute any changes within 30 days of notification.

g. That as per clause 1.3 of the agreement, the complainants agreed to pay various charges beyond the basic sale price and preferential location charges, including club membership fees, club maintenance charges, electricity facility charges, IFMSD, EDC/IDC charges, and stamp duty charges. Additionally, clause 8.2 stipulated that the complainants, agreed to cover maintenance charges, including water charges based on maintenance bills issued by the Maintenance Agency/Company for common area upkeep from the possession offer date, regardless of actual possession.

h. That the complainants opted for *r*eserved car parking against the apartment in question. The complainants were aware of the car parking charges, at the time of booking. However, they are now refusing to cover the car parking costs, claiming it to be illegal. As per clause 1.3 of the agreement the complainants agreed to pay Rs.3,00,000/- for the car parking a term they now dispute. Since the subject agreement was mutually understood and accepted by the Complainants, the Respondent is justified in enforcing the charges accordingly.

i. That the charges for electricity connection, water connection, and sewerage connection, including security deposits for obtaining these service connections, are payable by the allottees. However, the respondent applied for these connections on behalf of the allottees i.e., the complainants are liable to make payment for the same as agreed. Despite this, the respondent facilitated the application for these connections on behalf of the allottee, with the Complainants being obligated to fulfil the payment as agreed.

j. That in accordance with provision of clause 1.3 and clause 4 of the agreement, the complainants were liable to pay the club membership charges as agreed

under the terms of the agreement. But, are now trying to escape from the same on one pretext or the other.

k. That the complainants were aware of the terms pertaining to escalation cost which the parties had agreed under the agreement and by virtue of provision of clause 1.13 of the agreement the complainants were liable to pay the escalation cost to a maximum of 10% as mentioned and agreed under the agreement. The respondent is charging for the cost escalation in terms of the agreement and nothing beyond the agreement has been charged. That for purpose of fair adjudication the respondent has even provided justification of the cost escalation to the complainant, wherein, the respondent have restricted its demand for escalation to the extent of 10% in terms of the buyers agreement.

l. Furthermore, as per the provision of clause 19 of the agreement the respondent was entitled for the extension of period for handing over the possession of the said apartment to the complainants for the delayed period and in such case the complainants have even agreed that they shall not be entitled to any claim, compensation for such delay. However, the respondent was committed to complete the construction of the project but the same was slightly decelerated due to the reasons beyond the control, for which the respondent was entitled for extension of time in handing over the possession.

m. That the respondent was committed to completing the project and handing over possession within the proposed timelines, but faced delays due to factors beyond its control, such as the impact of demonetization in late 2016 and the implementation of the Goods and Services Tax (GST) in 2017. Various court orders and notifications, including orders from National Green Tribunal, imposed bans on construction activities, further hindering progress. The delays caused by unforeseen circumstances, including the Covid-19 pandemic and

workforce shortages, led to an approximate extension of 1.7 years in offering possession.

n. That the respondent has completed the project and obtained the occupation certificate on 13.01.2023 from the Directorate of Town and Country Planning Haryana (DTCP) for the tower where the complainant's apartment is located. Subsequently, on 18.02.2023, the respondent issued an offer of possession letter to the complainants, indicating the commencement of possession handover for all apartments in the 'Aqua Front Tower'. Also, the respondent requested the complainants to pay the remaining outstanding balance of Rs.86,06,764/- after adjusting Rs.5,96,491/- for delayed possession charges which the complainants were entitled for.

o. That the respondent while offering the possession had raised demands which are part of the agreement and had been agreed by the complainants. However, the complainants with an intent to wriggle out from their liabilities had proceeded to file the complaint with an intent to avoid all demands which were earlier agreed but same has been disputed on one pretext or the other in the complaint.

p. That the complainants took over the vacant and peaceful physical possession of the apartment in question vide possession takeover confirmation letter dated 26.05.2023, after verifying all the specifications/fittings/fixtures in the said apartment and upon the conditions contained in the occupation certificate and maintenance agency which the complainants undertook to abide.

q. That after facing various obstacles, the respondent complied with the terms of the agreement by initially offering possession through an offer of possession letter dated 18.02.2023 and subsequently handing over vacant and physical possession to the complainants on 26.05.2023 The complaint is founded on misleading information and should be dismissed with costs for wasting the

valuable time and resources of the Authority, as it is an utter abuse of the process of law.

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. Jurisdiction of the authority

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

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 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.*

12. 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.

F. Findings on the objections raised by the respondent:

F. I Objections regarding force majeure.

13. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal and ECPA to stop the construction, non-payment of instalment by allottees, shortage of labour. The plea of the respondent regarding various orders of the NGT and demonetisation and all the pleas advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. The plea regarding demonetisation is also devoid of merit. Further, there may be cases where allottee has not paid instalments regularly but all the allottee cannot be expected to suffer because of few allottee. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

F. II. Objection regarding delay in completion of construction of project due to outbreak of Covid-19.

14. In the present case, the respondent was liable to complete the construction of the project and handover the possession of the said unit by 04.07.2020. It is claiming benefit of lockdown which came into effect on 23.03.2020. As per ***HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020***. The completion date of the aforesaid project in which the subject unit is being allotted

to the complainants is 04.07.2020 i.e. after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As such the due date for handing over of possession comes out to 04.01.2021.

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

G.I Direct the respondent to pay delay possession charges.

15. 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."*

16. Clause 7.1 of floor buyer's agreement provides for handing over of possession and is reproduced below:

> ***7.1***
> *The company shall endeavour to offer the possession of the said apartment to the Allottee(s) **within a period of 36 months with a grace period of another 6 months from the date of execution of agreement** subject to timely payment of the sale price, other charges as per Detail of payment (Annexure-1), payment plan (annexure-2) and all other payments as per the terms of this agreement including payment of interest by the allottees.....*

17. 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.

18. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 months from the date of execution of agreement and it is further provided in agreement that promoter shall be entitled to a grace period of six months. The buyer's agreement was executed between the parties on 04.07.2017. Therefore, the due date of possession comes out to be 04.07.2020. The respondent/promoter in the builder buyer agreement under the clause 7.1 itself has sought additional grace period of 6 months. The Authority as per ***notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020***, has already allowed the grace period of 6 months from 01.03.2020 to 01.09.2020. Therefore, there is no reason why this benefit cannot be allowed to the complainant/allottee who is duly affected during above such adverse eventualities and hence a relief of 6 months will be given equally to both the complainant/allottee, and the respondent and no interest shall be charged by either party, during the COVID period i.e., from 01.03.2020 to 01.09.2020. In the instant complaint, the due date of handing over of possession comes out to be 04.01.2021 and grace period of 6 months on account of force majeure is being granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent-builders. Therefore, the due date shall be 04.01.2021

19. **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.
20. 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.
21. 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., 28.03.2024 is @ 8.85 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
22. 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.
23. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of buyer's agreement executed between the parties on 04.07.2017, the possession of the booked unit was to be delivered within 36 months from the date of execution of buyer's agreement (04.07.2017) which comes out to be 04.07.2020. The grace period of 6 months is allowed in lieu of covid-19. Therefore, the due date of handing over possession comes out to be 04.01.2021. Occupation certificate was granted by the concerned authority on 13.01.2023 and thereafter, the possession of the subject flat was offered to the complainants on 18.02.2023. Copies of the same have been

placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 04.07.2017 to hand over the possession within the stipulated period.

24. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 13.01.2023. The respondent offered the possession of the unit in question to the complainants only on 18.02.2023, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 month of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (18.02.2023) which comes out to be 18.04.2023.

G.II Direct the respondent to refund illegal charges of Rs.3,00,000/- paid by complainants toward covered car parking.

25. The complainants herein are seeking a refund of an amount of Rs.3,00,000/- collected towards covered car parking. The builder buyer agreement executed between the parties contained a detailed breakup of total price of the unit. The relevant portion of the buyer's agreement is extracted below:

"1.3
The Allottee(s) has understood and agreed that in addition to the Basic Sale Price (BSP) and applicable Preferential Location Charges (PLC), following other charges and deposits shall be payable by the Allottee(s):
.....
(g) Reserved car parking space charges @Rs. 3,00,000/- each."
(Emphasis supplied)

26. In view of the above-mentioned clause 1.3(g), the car parking charges were separately included in the break-up of total sale price of the subject unit. The charges for car parking recovered by the respondent are in terms of buyer's agreement. Hence, the Authority cannot accede with the relief sought by the complainants for refund of the car parking charged by the respondent

G.III Direct the respondent to refund the illegal charges of Rs.3,50,000/- paid the complainants towards covered club membership charges.

27. The complainants are seeking a refund of an amount of Rs.3,50,000/- collected towards club membership charges. Perusal of buyer's agreement dated 04.07.2017 executed between the parties itself reveals that club membership charges amounting to Rs.3,50,000/- were optional. These charges would only be payable if the complainants choose to avail themselves of the club membership. This understanding was explicitly agreed upon between the parties as specified in the buyer's agreement. Relevant clause of the agreement is extracted below:

"1.3
The Allottee(s) has understood and agreed that in addition to the Basic Sale Price (BSP) and applicable Preferential Location Charges (PLC), following other charges and deposits shall be payable by the Allottee(s):
.....
(a) Club Membership Charges of Rs. 3,50,000/-, if the allottee opts for the facility and takes membership of the Club at the time of Application."
(Emphasis supplied)

28. Also, in the case of ***Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021***, the Hon'ble Authority had already decided that if the club has come into existence and the same is operational or is likely to become operational soon, i.e., within reasonable period of around 6 months, the demand raised by the respondent for the said amenity shall be

discharged by the complainants as per the terms and conditions stipulated in the builder buyer's agreement. However, if the club building is yet to be constructed, the respondent should prepare a plan for completion of the club and demand money regarding club charges and its membership from the allottees only after completion of the club.

29. The Authority is of view that the club charges are justified and legal but club membership registration charges shall be payable once club comes into existence. It is incumbent upon the respondent to refund the club membership charges collected from the complainants until the club achieves operational status. Any demand for club charges as per the buyer's agreement can only be raised by the respondent once club comes into existence.

G. IV Direct the respondent to refund the additional taxes charged and collected from the complainants under the garb and guise of illegal and wrongful increase in total sale consideration of the unit.

G.V Direct the respondent to refund the illegal charges of Rs.10,56,193/- paid by the complainants towards additional BSP for change in Area.

G.VI. Direct the respondent to refund the illegal charges of Rs.40,891/- paid by the complainants towards Additional EDC/IDC.

G.VII Direct the respondent to refund the illegal charges of Rs.59,700/- paid by the complainants towards Additional PLC for Change in Area.

G.VIII Direct the respondent to refund the excess taxes of Rs.2,42,944/- paid by the complainants towards illegally enhanced cost of the unit.

30. 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.

31. The complainants states that the area of the said unit was increased from 1590 sq. ft. to 1789 sq. ft. vide offer of possession dated 18.02.2023 without giving any prior intimation to, or by taking any written consent from the allottee. The respondent in its defence submitted that increase in super area was duly agreed by the complainants at the time of booking/agreement and the same was

incorporated in the buyer agreement. Relevant clauses of the agreement is reproduced hereunder:

"Clause 6.4

The alterations in the building plans may involve change in the number of floors in the building, position, location, size, number, dimension, direction / facing, numbering of the Apartment or super area of the said Apartment. ***If the change in super area of the said Apartment results up to 12.5% because of such alterations or for any other reason, the Allottee(s) shall pay to the Company the BSP and other applicable charges at the same rate and in the same manner as mentioned in the Details of Payment and Payment Plan.*** *However, if the change in super area of the said Apartment after construction results* ***more than ‡12.5% because of such alterations or for any other reason the Company shall intimate in writing to the Allottee(s) after completion of construction the extent of such change/modification in the super area of the said Apartment and the resultant change/ modification in the total Sale Price and other charges****. The Allottee(s) agrees to inform the Company his/ her consent or objections to such change/ modification in the super area of the said Apartment and the change/modification in the total Sale Price and other charges within 30 days from the date of intimation by the Company failing which the Allottee(s) shall be deemed to have given his / her consent to such changes/modifications. The Allottee(s) further agrees that, any increase or decrease in the super area of the said Apartment shall be payable by the Allottee(s) or refundable by the Company at the same rate per square feet as mentioned in this Agreement. If the Allottee(s) objects in writing to such change in the super area of the said Apartment within a period of 30 days from the date of intimation by the Company, the allotment of the said Apartment to the Allottee(s) shall stand terminated/ cancelled and atter deduction of the interest for delayed payment, brokerage, cost of any incentive or facility given and other charges of non-refundable nature and upon such refund the Company thereafter shall be free to deal with the said Apartment in any manner whatsoever at its sole discretion including re-allotment of the said Apartment to any other person.*

32. The clause 6.4 of the buyer's agreement allows for changes in the super area of the unit, stating that "if the change in super area of the said Apartment results up to 12.5% because of such alterations or for any other reason, the Allottee(s) shall pay to the company the BSP and other applicable charges." In the present case,

the increase in super area from 1590 sq. ft. to 1789 sq. ft. amounts to an 12.5% increase, which falls well within the threshold specified in the agreement.

33. Furthermore, the agreement provides that the respondent is required to "intimate in writing to the allottee(s) after completion of construction the extent of such change/modification in the super area." The respondent has fulfilled this requirement by informing the complainant of the increase in super area at the time of the offer of possession on 18.02.2023. The aforementioned does not mandate any prior intimation before the completion of construction.

34. It is also important to note that the agreement was executed prior to the enactment of the Rules, 2017. So, the provisions of the agreement, which were mutually agreed upon by the parties, should be the governing framework for determining the rights and obligations of the parties.

35. Hence, in light of the clear contractual provisions allowing for changes in super area and the respondent's compliance with the intimation requirements, the respondent's actions of charging the additional BSP and other charges due to the increase in the super area of the subject unit can be levied subject to furnishing of complete details relating to increase in super area along with its justifications to the complainants.

G.IX Direct the respondent to refund the illegal charges of Rs.44,725/- paid by the complainants towards Water Connection Charges.

G.X Direct the respondent to refund the illegal charges of Rs.2,14,680/- paid by the complainants towards Electricity Facility Charges.

36. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

37. The authority has already dealt with the above charges in the compliant bearing no. ***CR/4747/2021 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-rara 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-e-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. Accordingly, the respondent is entitled to charge on above pretext.

G.XI Direct the respondent to refund the illegal and premature annual maintenance charges of Rs.1,11,462/- paid by the complainants towards Interest charges.

38. The complainants are seeking a refund of an amount of Rs.1,11,462/- collected towards maintenance charges. This issue has already been dealt with by the Authority in complaint bearing no. ***4031 of 2019 titled as "Varun Gupta Vs. Emaar MGF Land Limited" decided on 12.08.2021***, wherein it was held that the respondent is right in demanding 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 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 maintenance charges has been demanded for more than a year.

39. Also, as per the clause 8.3 of the buyer's agreement the complainants agreed to pay the maintenance charges for twelve months in advance upon offer of possession. The relevant clause of the buyer's agreement is extracted below:

"8.3

In order to keep the Colony well maintained, ***the Allottee(s) shall pay the maintenance charges (excluding electricity and water charges) for 12 months in advance upon offer of possession of the said Apartment*** *by the Company. The advance maintenance charges shall be payable on estimated basis and in case of shortfall because of increased actual maintenance cost, the Allottee(s) shall be liable to pay such shortfall on pro rata basis.*

40. Hence, the Authority cannot accede with the relief sought by the complainants for refund of the premature maintenance charges charged by the respondent.

G.XII Direct the respondent to refund the illegal charges of Rs.9,49,512/- paid by the complainants towards Escalation Charges.

41. The complainants took a plea that the respondent-builder has arbitrarily imposed escalation cost at the time of offer of possession. The respondent submits that cost of escalation was duly agreed by the complainants at the time of agreement and the same was incorporated in the buyer agreement. The undertaking to pay the above-mentioned charge was comprehensively set out in the buyer agreement. The said clause of the agreement is extracted below:-

"Clause 1.13

.....

The Company shall make efforts to limit the escalation to a maximum of 10% (ten percent). In the event of escalation exceeding the said maximum limit, the Allottee may at its sole discretion, either accept the escalation beyond the maximum of 10% or withdraw from the Agreement. Upon such withdrawal, the total amount paid to the Company minus Earnest Money Deposit, Instalments paid, interest if any paid/ payable, brokerage and cost of any scheme or benefit given and non-refundable charges, shall be refunded to the Allottee without any interest."

42. In the present complaint the complainants wish to continue with project. The Authority cannot accede with the relief sought by the complainants to refund the escalation charges charged by the respondent as the same was agreed by the parties at the time of execution of buyer's agreement. It is also pertinent to note that any cost escalation occurring after the due date of possession should be borne by the respondent. This is because such escalation is a direct result of the respondent's failure to transfer possession of the unit within the agreed

timeframe, leading to increase in cost. Consequently, attributing the delay and subsequent escalation costs to the complainants would be unjust. Therefore, it is concluded that the escalation charges imposed after the due date of possession are illegal and are to be refunded.

G.XIII Direct the respondent to execute conveyance deed

43. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainants. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

44. Since the possession of the subject unit has already been offered after obtaining occupation certificate on 13.01.2023. The respondent is directed to get the conveyance deed executed within a period of three months as per the terms of Section 17 of the Act of 2016 from the date of this order.

H. Directions of the Authority:

45. 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 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 complainant from due date of possession i.e., 04.01.2021 till expiry of 2 months from the date of offer of possession (18.02.2023) i.e., up to 18.04.2023 only. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.

II. Also, the amount of Rs.5,96,491/- paid by the respondent towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

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 issue a revised statement of account after adjustment of delayed possession charges, and other charges as per the above findings within a period of 30 days from the date of this order. The complainants are directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.

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

VI. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainants. Therefore, the respondent is directed to get the conveyance deed executed within a period of three months from the date of this order.

46. Complaint stands disposed of.
47. File be consigned to registry.

Dated: 28.03.2024

V.I –
(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory
Authority, Gurugram