

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

**Complaint no. :** 1970 of 2023  
**Date of filing:** 04.05.2023  
**Order pronounced on:** 29.05.2024

Monika Satija

**R/o:** House no. 988, 3<sup>rd</sup> floor, Sector 40,  
Gurugram, Haryana- 122003

**Complainant**

Versus

St. Patricks Reality Private Limited

**Regd. office:** The Median, central Park Resorts, Off  
Sohna Road, Sector-48, Gurugram -122018, Haryana

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Sh. Chaitanya Singhal (Advocate)

**Complainant**

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:

Sr. No.	Particulars	Details
1.	Name and location of the project	"Central Park Flower Valley", Sector-32, Sohna, Gurugram
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.	Name of the Licensee	Ravinder Singh-Balkaran-Vijay Raghav
6.	RERA registered/ not registered and validity status	Registered Registered vide no. 150 of 2017 dated 28.08.2017 Valid upto 31.07.2022
7.	Unit no.	1102, 11 <sup>th</sup> floor, tower-C, (as per BBA page 29 of complaint)
8.	Unit area admeasuring	1590 sq. ft. (as per BBA page 29 of complaint)
9.	Provisional allotment	27.04.2017 (page 27 of complaint)
10.	Builder buyer agreement	18.07.2017 (page 28 of complaint)
11.	Possession Clause	<b>7.1 Possession</b> <i>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</i>

		<p><i>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.</i></p> <p><b><i>(Emphasis supplied)</i></b></p>
12.	Due date of possession	18.07.2021 (calculated from the date execution of BBA including grace period of 6 months being unqualified and unconditional + 6 months grace in lieu of HARERA notification no. 9/3-2020 dated 26.05.2020 for Covid-19) <b><i>(*Inadvertently recorded as 18.01.2021 in proceedings dated 13.03.2024)</i></b>
13.	Basic Sale price	Rs.83,95,009/- (page 30 of complaint)
14.	Total Sale Consideration	Rs. 1,03,89,339/- (as per BBA page 61 of reply)
15.	Amount paid by complainant	Rs.50,00,000/- (as per SOA page 60 of complaint)
		Rs.76,68,185/- (under protest as alleged by complainant as per final offer of possession letter to avoid cancellation by respondent)
16.	Demand notices for due payments	01.05.2017 (page 13 of reply)
17.	Occupation certificate	21.03.2023 (page 90 of reply)
18.	Offer of possession	25.03.2023 (page 93 of reply)
19.	Email sent by complainant raising concern regarding charges of increase in super area and illegal	04.04.2023 and 10.04.2023 (page 83 and 87 of complaint)

	demands in offer of possession	
20.	Notice for cancellation of unit	21.05.2023

**B. Facts of the complaint:**

3. The complainants have made the following submissions: -

- i. That on 08.02.2017 the complainant booked a 3 BHK flat in respondent's project "Lake Front Towers" at Central Park Flower Valley, Sohna, Gurugram, Haryana.
- ii. That on 27.04.2017, the complainant received a provisional allotment letter from the respondent for (3 BHK flat) unit no. 1102, 11<sup>th</sup> floor tower- C in the respondent's project admeasuring super area of approx. 1590 sq. ft. for a basic sale price of Rs.5,279.88/- per sq. ft. along with preferred location charges for lake facing unit @ Rs.300/- per sq. ft.
- iii. Thereafter, on 18.07.2017 builder buyer agreement was executed between the complainant and the respondent which once again re-iterated the terms and conditions of the Provisional allotment letter received by the complainant.
- iv. Further as per "ANNEXURE- 1" of builder buyer agreement, the total sale consideration of the unit including EDC, IDC, PLC, car parking charges, IFMS & Power back-up connection charges was Rs.1,03,89,339/- plus govt. taxes.
- v. Further as per clause 7.1 of the buyer's agreement the respondent promised to deliver the possession of booked unit within a period of 36 months from the date of execution of the builder buyer agreement which comes to 18.07.2020. However, the respondent failed to complete and deliver the possession of booked unit upon the deemed date of possession.
- vi. That till date the complainant had paid a sum of Rs.50,00,000/- to the respondent out of the total sale consideration of Rs.1,03,89,339/-. The

- remaining balance was to be paid to the respondent at the time of offer of possession as per the "payment plan" agreed in the buyer's agreement.
- vii. That on 25.03.2023 the respondent after a delay of 32 months from the deemed date of possession sent an offer of possession along with final demand letter to the complainant. The offer of possession stated that the respondent had received occupation certificate on 21.03.2023. However, the offer of possession was not accompanied with a copy of occupation certificate. The respondent had not attached the copy of OC intentionally since it had not received the OC from the concerned department.
- viii. Further the respondent in its final demand letter annexed with the offer of possession letter dated 25.03.2023 demanded several illegal charges from the complainant.
- Escalation Charges- Rs. 9, 44, 570/- along with 18% GST.
  - 12.5 % Super area increase with no increase in carpet area - Rs. 11, 51,287/- plus 18% GST.
  - Electrification charges (electricity facility charges)- Rs. 2, 14,680/- plus 18% GST.
  - Water connection charges - Rs. 44,725/- plus 18% GST.
- ix. These charges were nowhere specifically mentioned in the builder buyer agreement and same are wrong and illegal.
- x. That grace period of 6 months as per buyers' agreement is not applicable to the respondent since the respondent failed to handover the possession of the unit within that grace period of 6 months and offered possession after a delay of 32 months.
- xi. That delayed possession charges as per HRERA Rule 15 was @ 10.6% p.a. applicable on 25.03.2023 i.e. on the date of offer of possession sent by respondent and for a delay of 32 months which comes out to Rs. 14,13,333/-. However, to the utter shock and surprise of the complainant,

- the respondent had adjusted delayed possession charges @9.6% p.a. for delayed period of 18 months and 8 days which comes to Rs. 6,61,916/- on account of delayed possession charges which is wrong and unjustified.
- xii. That the respondent had arbitrarily increased the super area of the unit from 1590 sq. ft to 1790 sq. ft. (which amounts to approximately 12.5% of the area increase), however to the utter shock and surprise of the complainant there is no or minimal increase in the carpet area of the flat as compared to original carpet area initially booked. This has led to a wrongful loss to the complainant and wrongful gain to the respondent.
- xiii. That the complainant on comparing the carpet area and basic drawing of their unit i.e. on comparing flat "old layout plan" and "new layout plan", the respondent had very cleverly filled up the gaps that were between the balcony and building. The said filling of gaps of the balcony and building had not led to any increase in the carpet area of the flat and caused zero benefit to complainant.
- xiv. That the respondent had demanded a sum of Rs.11,51,287/- plus taxes on increase of super area. The respondent apart from demanding additional basic sale price had also demanded additional PLC and EDC/IDC upon it which is highly unjustified and illegal. The respondents at the time of offer of possession forcibly and increased the super area of flat from 1590 sq. ft. to 1790 sq. ft. But the carpet area remains the same which has been objected by the complainants at the time of offer of possession.
- xv. That on 03.04.2023 the complainant visited the office of the respondent to discuss the illegal charges levied and super area increase in the offer of possession.
- xvi. That on 04.04.2023, 06.04.2023, 10.04.2023 the complainant wrote emails and gave reminders to the respondent wherein the complainant had raised

his serious concerns regarding the said charges and super area increase. On 11.04.2023 the respondent replied to the e-mail of the complainant and sent a copy of unit old lay-out plan and new lay-out plan.

- xvii. Further the respondent demanded escalation charges @10% on sale consideration amounting to Rs.528/- per sq. ft on the final super area of 1790 sq. ft (original Super Area 1590 sq. ft.) total amounting to Rs. 9,44,570/- along with govt. taxes from the complainant in its final demand letter cum offer of possession letter dated 25.03.2023.
- xviii. That the above said escalation cost demanded by respondent is wrong and illegal. The buyer's agreement is one sided and at the time of offer of possession, the respondent used new trick for extracting extra money from complainant and forcibly imposed escalation cost of Rs. 9,44,570/- with GST and wrongly justified it. The basic sale price fixed at the time of booking and demand of escalation cost is totally illegal, arbitrary, unjustified, and unacceptable. The respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of flat buyer's agreement with a malicious and fraudulent intention and caused deliberate and intentional mental and physical harassment to the complainant.
- xix. That as per the RERA Model builder buyer agreement, clause 1.3 of the RERA Model Agreement for Sale states that the total price of the unit should be escalation free. That the respondent had wrongly included cost escalation clause in the BBA after the enactment of RERA Act 2016 into force and the respondent had not made buyers agreement as per the "Model Rera Agreement".
- xx. That was executed between the complainant and the respondent on 18.07.2017 i.e. after the coming of RERA Act and HRERA Rules into force. The respondent had not made the buyers agreement as per Act of 2016 and

had inserted one sided and arbitrary clause into it. The respondent had sold the flat to the complainant based upon the super area and not carpet area of the flat which is in violation of the model builder buyer agreement of Act, 2016. The respondent has grossly violated the provisions of Act 2016 for which penalty under section 59 and 63 of Act 2016 should be imposed.

- xxi. Further the respondent had demanded water connection charges amounting to Rs.44,725/- plus additional govt. taxes from the complainant in his offer of possession letter cum final demand letter.
- xxii. Further the respondent demanded electricity facility charges/ electrification charges of Rs.2,14,680/- plus additional govt. taxes from the complainant. The said head and amount were nowhere specifically mentioned in the builder buyer agreement. The charges are included in the basic sale price of flat and the respondent cannot claim them from the complainant.
- xxiii. Further the respondent apart from demanding IFMS @ Rs.50/- per sq. ft., total amounting to Rs. 89,450/- had also demanded twelve months advance maintenance charges @ Rs.4.40 /- per sq. ft. plus GST, total amounting to Rs.1, 11,462/- from the complainant.
- xxiv. That the respondent had levied interest on delayed payment amounting to Rs.3,42,698/-. There is no delay or default in making payment on behalf of the complainant. The complainant had booked/applied for a "luxury residential category unit" from the respondent. However, the respondent had allotted a "bare shell/raw unit" to the complainant. Thereafter the respondent converted the "bare shell unit" of the complainant to "Luxury unit". The complainant had immediately made payments to the respondent after the said correction was done on behalf of the respondent. The complainant had made the payment as soon as Luxury unit with Lake View



PLC was allotted. The complainant had various times taken the Statement of Accounts from respondent's CRM team and it showed that no delayed payment interest due. The delayed payment interest of Rs. 3,42,698/- should be removed. The said payments were made as per the "PAYMENT PLAN" attached to the "Builder Buyer Agreement".

- xxv. Thereafter the complainant received communication in the form of text message from the respondent regarding payment of demand of offer of possession wherein delayed payment interest was removed.
- xxvi. That the complainant has trusted his hard-earned money and taken a substantial amount of loan to purchase the said unit in question for residing therein and have been paying EMI's on the loan and interest and being denied the use of their property and has completely shattered their dreams of owning a house of their own. That the total sale consideration of unit as per the builder buyer agreement was Rs. 1,03, 89,339/- plus all govt. taxes. However, the respondent had demanded a total sale consideration of Rs.1,30,10,883/- from the complainant which is approximately 30% increase in the demand as was originally agreed in the BBA.
- xxvii. Further the respondent had not registered its project under RERA and thereby had violated Section 3(1) of the RERA Act and is liable to incur penalty of up to 5 % of the total cost of the project under Section 59 and Section 63 of RERA Act, 2016 for non-registration of project in RERA.

**C. Written submissions of the complainant:**

4. The complainant filed the written submissions on 14.05.2024 and made the following submissions:
- i. That the escalation charges, 12.5% super area increase charges, electrification charges and water connection charges were nowhere

specifically mentioned in the BBA. These charges were nowhere specifically mentioned in the buyer's agreement.

- ii. That the grace period of six months as mentioned in the buyer's agreement is not applicable to the respondent since respondent failed to handover possession of the unit within that grace period of 6 months and offered possession after a delay of 32 months. Therefore, grace period of 6 months shall not be given to the respondent.
- iii. That the respondent apart from demanding IFMS had also demanded 12 months advance maintenance charges from the complainant. The promoter cannot demand advance annual maintenance deposit from an allottee, if the promoter is already collecting IFMS from the allottees.

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

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

- i. Direct the respondent to pay delay possession charges for a period of 32 months delay in giving possession as per Rule 15 of HRERA Rules, 2017 i.e., 10.6% p.a. from deemed date of possession till the final offer of possession plus 2 months.
- ii. Direct the respondent to remove charges on account of additional area increase since there has been no or very minimal increase in the carpet area of unit and the respondent had covered the open gaps in between the balconies.
- iii. Direct the respondent to remove illegal charges on account of cost escalation charges, electricity facility charges/electrification charges, water connection charges from the final demand letter.
- iv. Direct the respondent to remove interest of delayed payment charges since there has been no delay on the part of complainant in making payments.
- v. Direct the respondent not to levy holding charges upon the complainant.
- vi. Direct the respondent to issue a fresh offer of possession letter to the complainant after removal of all the above charges and handover the possession of the unit to the complainant after taking outstanding balance amount of Rs.53,89,339/- as mentioned in the BBA.

6. 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.

**E. Reply by the respondent.**

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

- a. That the complainants in the year 2017 learned about the residential project "Lake Front Towers" at Central Park Flower Valley (earlier known as Central Park 3) being developed by the respondent at Sohna, Gurugram.
- b. That on 04.02.2017, the complainant applied for booking of an apartment and expressed the interest for booking an apartment vide provisional allotment, in the aforesaid project and the same was acknowledged by the respondent vide letter dated 27.02.2017.
- c. That the respondent vide provisional allotment letter dated 27.04.2017, provisionally allotted an apartment bearing no. 1102, 11<sup>th</sup> floor, tower C in the said project.
- d. That as per clause 2.9 of the application form, the complainants were aware of the terms of the sale price has been calculated upon the basis of the total super area of the apartment and the same is subject to change upon final completion of the project.
- e. That on 18.07.2017, an apartment buyer agreement was executed between the parties at an agreed basic sale price of Rs. 5279.88/- per sq. ft. of super area i.e., Rs. 83,95,009/- excluding all other charges mentioned and agreed by the complainants under the agreement. The said agreement was signed by the complainants voluntarily with free will and consent without any demur.
- f. That in terms of clause E of the agreement, it is evident that the complainants have applied for the apartment after getting due diligence, verification done

and post being fully satisfied with project and the booking of complainants was provisional subject to the terms of the agreement.

- g. That as per clause 7.1 of the agreement, the possession of the apartment was proposed to be offered within a period of 36 months along with a grace period of 6 months from the date of the agreement including timely payment of instalments and as per the same the possession was to be handed over subject to force majeure circumstances.
- h. That the respondent is also entitled to extension of 6 months time period on account of delay so caused due to worldwide spread of covid-19 spread which the learned authority and other courts had considered as a force majeure circumstances and have allowed extension of 6 months to the promoters at large on account of delay so caused as the same was beyond the control of the respondent. The Haryana Real Estate Regulatory Authority, Panchkula vide its resolution dated 09.08.2021 has considered the period affected from the second wave of covid 19 between 01.04.2021 till 30.06.2021 as force majeure event and granted 3 months extension to all the promoters. The project of respondent was also affected by the second wave of covid and therefore, the extension for a period of 3 months may be allowed. In lieu of the same, the respondent herein shall also be entitled to such special extension as the due date of handing over the possession happens to fall within the said time frame.
- i. That while computing the due date of possession the grace period of 6 months as agreed by the complainant under clause 7 may also be considered and allowed in view of judgment of Hon'ble Supreme Court in, "M/s Supertech Limited vs, Rajni Goyal", Civil Appeal no. 6649-50 of 2018, wherein keeping in view the bans imposed by NGT and other government authorities, etc., the promoter was allowed for the grace period enshrined under the agreement.

- j. That the respondent was well within his rights to charge for increase in super area in terms of clause 2.9 of the application form, clause 1.10 and clause 6.4 of the agreement. That in terms of clause 1.10 of the agreement, the complainants agreed that super area of the apartment was tentative and subject to variation/modification i.e., increase or decrease and such variation as may occur at time of completion or at time of obtaining occupation certificate. Further, in terms of clause 6.4 of the agreement, the respondent was well within its rights to charge for change in area of apartment upto plus minus 12.5% and in case it goes above 12.5% then only the respondent was obligated to inform the complainants. That, therefore, the respondent is entitled to charge Rs. 11,02,201/- on account of increase in super area from 1590 sq. ft. to 1789 sq. ft. as proper justification for the said increase had been provided.
- k. That as per provision of clause 1.13 of the agreement, the original allottees were liable to pay the escalation cost to a maximum of 10% as mentioned and agreed under the agreement. That the actual escalation comes out to be 16.69%, however, respondent has restricted its demand for escalation to extent of 10% of the buyer's agreement. Even this Ld. Authority, while adjudicating upon the bunch of matters of around 98 complaints, against BPTP Limited, main matter being Mrs. Rashmi Budhiraj vs. BPTP Limited, Complaint No. 2221 of 2018, had ordered to constitute a high powered committee vide order dated 06.07.2021, by which a report was submitted with the findings that the promoter may be allowed to charge the cost escalation as it was duly agreed under the agreement and the same was further upheld by this Ld. Authority.
- l. That the complainant failed to pay the instalments as and when demanded and has merely paid Rs.49,99,999/- against the sale consideration of Rs.1,26,68,184/-. Despite owing to defaults of the complainant, the respondent issued an offer of possession letter dated 25.03.2023, wherein net amount

payable by complainant was Rs.76,68,185/- along with interest of Rs.3,42,698/- on account of delayed payment. However, the complainant failed to pay the same.

- m. That as per the provision of clause 1.3 of the Agreement, the complainant agreed that in addition to the basic sale price and preferential location charges, the complainant is liable to pay other charges such as club membership, club maintenance charges, electricity facility charges, IFMSD, EDC/IDC Charges, stamp duty charges.
- n. That as per the provision of clause 8.2 of the Agreement the complainant upon own free will and consent had agreed to pay maintenance charges including charges for water as per the maintenance bills raised by the Maintenance Agency/Company for maintenance of common areas and facilities as mentioned in clause 8.1 from date of offer of possession irrespective of fact that whether allottee has actually taken over possession of said apartment or not.
- o. That by virtue of provision of clause 1.3(f) of the agreement, the complainants herein undertook and were bound to pay charges for connection and installation of water, electricity and other services including connection charges, cost of meter etc. Further, under Annexure 1 and Annexure 2 to the agreement, it was made evident and clear to the Complainants that water connection charges and Electricity Connection Charges, etc. shall be payable extra at the time of possession. Also, this Ld. Authority in the matter titled as "Varun Gupta vs Emaar MGF Ltd." being Complaint no. 4031 of 2019' has rightly held that the promoter will be entitled to recover the actual charges paid to the concerned department from the complainant on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project.

- p. That the respondent has completed the project and obtained the occupation certificate on 21.03.2023 from the Directorate of Town and Country Planning Haryana (DTCP) for the tower where the complainant's apartment is located. Subsequently, on 25.03.2023, 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.80,10,883/- after adjusting Rs.5,96,491/- for delayed possession charges which the complainants were entitled for.
- q. 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.
- r. That the complainant issued a reminder letter for overdue payment dated 04.05.2023, to pay outstanding dues of Rs.76,68,185/- against apartment in question excluding IFMS of Rs.89,450/-, maintenance charges of Rs.1,11,462/- and delay payment interest as on date.
8. All other averments made in the complaint were denied in toto.
9. 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.
- F. Written submissions of the respondent:**
10. That the respondent filed the written submissions on 24.04.2024 and made the following submissions:

- i. That the complainant disputed various demands of increase in super area, escalation charges, electrification charges, water connection charges, advance maintenance charges, IFMSD and interest on delayed payment charges despite being aware of the terms of the agreement as agreed even before the time of execution of buyer's agreement.
- ii. That the respondent is entitled to charge additional BSP of Rs.10,50,659/- on account of increase in super area from 1590 sq. ft. to 1789 sq. ft. in terms of clause 1.10 and 6.4 of the buyer's agreement as the respondent has provided proper justification of the said increase.
- iii. That the complainant is not entitled for delayed possession interest as the same has already been adjusted against the due demand by the respondent while offering the possession to the complainant. The respondent has already paid/adjusted delayed possession interest of Rs.6,61,916/- calculated at prevailing rate of interest i.e., 9.60% p.a. as on the date of offer of possession, against outstanding dues communicated vide offer of possession letter dated 25.03.2023.

#### **G. Jurisdiction of the authority**

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

#### **G.I Territorial jurisdiction**

12. 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.

#### **G.II Subject matter jurisdiction**



13. 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.*

14. 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.

**H. Findings on the objections raised by the respondent:**

**H. I Objections regarding force majeure.**

15. 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.

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

16. In the present case, the respondent was liable to complete the construction of the project and handover the possession of the said unit by 18.01.2021. 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 18.01.2021 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 18.07.2021.

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

- I.I Direct the respondent to pay delay possession charges for a period of 32 months delay in giving possession as per Rule 15 of HRERA Rules, 2017 i.e., 10.6% p.a. from deemed date of possession till the final offer of possession plus 2 months.**

17. 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. 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.***

18. 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....."*

**(Emphasis supplied)**

19. 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.

20. **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 an unqualified grace period of six months. The buyer's agreement was executed between the parties on 18.07.2017. Therefore, the due date of possession comes out to be 18.01.2021. The respondent/promoter has sought additional grace period of 6 months in lieu of

covid-19. 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 18.07.2021 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 18.07.2021.

21. **Admissibility of delay possession charges at prescribed rate of interest:** -The complainant is 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*.
22. 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.
23. 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., 29.05.2024 is @ 8.85 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

24. 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.
25. 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 18.07.2017, the possession of the booked unit was to be delivered within 36 months from the date of execution of buyer's agreement (18.07.2017) along with unqualified and unconditional grace period of 6 months, which comes out to be 18.01.2021. 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 18.07.2021. Occupation certificate was granted by the concerned authority on 21.03.2023 and thereafter, the possession of the subject flat was offered to the complainants on 25.03.2023. 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 18.07.2017 to hand over the possession within the stipulated period.
26. 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 21.03.2023. The respondent offered the possession of the unit in question to the complainants only on 25.03.2023, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant 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 (25.03.2023) which comes out to be 25.05.2023 or actual handover of possession, whichever is earlier.

**I.II Direct the respondent to remove charges on account of additional area increase since there has been no or very minimal increase in the carpet area of unit and the respondent had covered the open gaps in between the balconies.**

27. The complainant states that the area of the said unit was increased from 1590 sq. ft. to 1789 sq. ft. vide offer of possession dated 25.03.2023 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 complainant 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 after 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.*

28. 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.
29. 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 16.02.2023. The agreement does not mandate any prior intimation before the completion of construction.
30. 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.

31. 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 are fully justified and are upheld subject to the proper justifications provided to the complainant.

**I.III Direct the respondent to remove illegal charges on account of cost escalation charges, electricity facility charges/electrification charges, water connection charges from the final demand letter.**

**I.IV Direct the respondent to remove interest of delayed payment charges since there has been no delay on the part of complainant in making payments.**

32. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will affect the result of the other relief and the same being interconnected. The authority shall now discuss all the issues pertaining to various charges levied by the promoter at the time of handing over of the possession and in terms of agreement signed between the parties.

**A. Cost escalation charges**

33. The complainants took a plea that the respondent-builder has arbitrarily imposed escalation cost at the time of offer of possession. The respondent-builder submits that cost of escalation was duly agreed by the complainants at the time of booking/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 reproduced hereunder:-

*"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."*



34. In the present complaint, the complainant wish, to continue with project. Perusal of case file reveals that justification for cost escalation had been provided by the respondent at page 48 to 88 of its reply (Annexure R3). The respondent has explained the rationale behind the price escalation for the subject unit, however, failed to specify the exact timing of this escalation. Later, at page 12 of written submissions dated 24.04.2024 (Annexure WA-1), the respondent has placed on record a "Cost Escalation Certificate" dated 22.09.2023, wherein Mr. Praveen Aggarwal and Co., Chartered Accountants have calculated the escalation cost from the date of issue of provisional allotment letter, i.e., 27.04.2017 till the promised possession date, i.e., September, 2021. However, the promised possession date is taken by them after considering the following:
- 36 months plus 6 months grace from the date of provisional allotment.
  - 6 months extension on account of Covid-19 situation.
  - Further, force majeure extension for 70 days.
35. The Authority is of the view that the time period taken for computation of escalation charges is not justified as firstly, it should commence from the date of entering into the buyer's agreement, i.e., from 18.07.2017 and not from the date of provisional allotment. Secondly, the Authority has only allowed 6 months grace period in lieu of covid-19 in addition to an unconditional grace period of 6 months specified in the byer's agreement. Thus, further grace period of 70 days being perse taken by the respondent is incorrect. Therefore, the promised possession date as construed in the Cost Escalation Certificate is incorrect as the due date of possession as computed by the Authority is 18.07.2021, however, the respondent had got calculated cost escalation upto September, 2021.
36. Hence, the Authority cannot accede with the relief sought by the complainant to revoke the escalation charges as the same was agreed by the parties at the time of execution of buyer's agreement. The respondent shall charge the escalation

charges in terms of the agreement. However, the complainant would be entitled to proof of such cost escalation from the respondent, before making a payment under this head.

37. Furthermore, it is clarified that any cost escalation subsequent to the stipulated due date of possession shall be assumed by the respondent. Such escalation arises directly from the respondent's inability to transfer possession of the unit within the agreed-upon timeframe, thus leading to increased costs. Consequently, attributing the delay occurring after the due date of possession to the complainant would be unjust.

**B. Water and Electricity connection charges.**

38. The complainant took the plea that the respondent-builder has arbitrarily imposed water and electricity charges at the time of offer of possession. The respondent-builder in its defense submits that water and electricity connection charges were duly agreed by the complainant at the time of booking/agreement and the same was incorporated in the buyer agreement. The undertaking to pay the above-mentioned charges was comprehensively set out in the buyer agreement. The said clause of the agreement is reproduced hereunder: -

*"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):*

*.....  
(f) for connection and of water, electricity and other utilities in the said Colony and/or Apartment which charges, cost of Meter, Meter charges & for connection from main line to the Apartment."*

**(Emphasis supplied)**

39. There is no doubt that all these charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and release of such connections in the name of the allottee and are payable by the allottee.

40. The authority has already dealt with the above charges in the complaint 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-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the complainant vis-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.

#### **C. Electrification charges**

41. 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.

#### **D. Interest on delayed payments**

42. The respondent is well within his rights to claim interest on the delayed payment charges in accordance with the provision of Section 2(za) of the Act, 2016. Therefore, 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.

43. However, no interest shall be charged by the respondent, during the covid period i.e., from 01.03.2020 to 01.09.2020 in terms of **HARERA notification no. 9/3-2020 dated 26.05.2020.**

**I.V Direct the respondent not to levy holding charges upon the complainant.**

44. The term holding charges or also synonymously referred to as non-occupancy charges become payable or applicable to be paid if the possession has been offered by the builder to the owner/allottee and physical possession of the unit not taken over by allottee, but the flat/unit is lying vacant even when it is in a ready-to-move condition. Therefore, it can be inferred that holding charges is something which an allottee has to pay for his own unit for which he has already paid the consideration just because he has not physically occupied or moved in the said unit.

45. 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 the respondent is not entitled to claim holding charges from the complainants at any point of time even after being part of the builder buyer agreement as per law settled by the **Hon'ble Supreme Court in Civil Appeal nos. 3864-3899/2020 decided on 14.12.2020**. The relevant part of same is reiterated as under-

*"134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."*

46. Therefore, in view of the above the respondent is directed not to levy any holding charges upon the complainant.

**I.VI Direct the respondent to issue a fresh offer of possession letter to the complainant after removal of all the above charges and handover the**

**possession of the unit to the complainant after taking outstanding balance amount of Rs.53,89,339/- as mentioned in the BBA.**

47. The Authority is of the view that the illegal demands raised in the offer of possession shall not be payable by the complainant, but the offer of possession remains to be valid.
48. The respondent has obtained the occupation certificate from the competent authority on 21.03.2023 and offered the possession of the allotted unit vide letter dated 25.03.2023. As per Section 19(10) of Act of 2016, the allottees are under an obligation to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. The complainants are directed to take the possession of the allotted unit after making payment of outstanding dues, if any within a period of 60 days of this order.
49. The respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement entered into between the parties.

**J. Directions of the Authority:**

50. 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:

1. 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., 18.07.2021 till expiry of 2 months from the date of offer of possession (25.03.2023) i.e., up to 25.05.2023 or actual handover, whichever is earlier. 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, *ibid*.

- II. Also, the amount of Rs.6,61,916/- 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 reliefs as per above within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues if any, after adjustment of delay possession charges within a period of next 30 days.
- V. The respondent is directed to handover physical possession of the subject unit within 30 days from the date of this order as occupation certificate of the project has already been obtained by it from the competent authority.
- VI. The respondent shall charge the escalation charges from the date of entering into buyer's agreement(18.07.2017) till the due date of possession(18.07.2021). However, the complainant would be entitled to proof of such cost escalation from the respondent, before making a payment under this head. Further, any cost escalation occurring after the due date of possession must be borne by the respondent.
- VII. The respondent would be entitled to recover the actual charges paid to the concerned departments' from the complainants/allottee(s) on pro-rata basis on account of electricity and water connection charges depending upon the area of the flat allotted to complainants vis-à-vis the area of all

the flats in this particular project. The complainant would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads.

VIII. The respondent is directed not to charge any electrification charges from the complainant.

IX. The respondent is not entitled to claim holding charges from the complainants/allottees at any point of time even after being part of the builder buyer agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided in 14.12.2020.

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

51. Complaint stands disposed of.

52. File be consigned to registry.

**Dated: 29.05.2024**



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