

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

**Complaint no.:** 3383 of 2020  
**Date of filing complaint:** 26.10.2020  
**Date of decision:** 02.04.2024

Ashok Chopra & Neelam Chopra  
**R/o:** A-104, 3<sup>rd</sup> floor , Amar Colony, Lajpat Nagar IV,  
New Delhi-110024

**Complainant**

Versus

M/s BPTP Ltd.  
**R/o:** M-11, Middle Circle, Connaught Circus, New Delhi-  
110001

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Ms. Neelam Kathuria (Advocate)  
Sh. Harshit Batra (Advocate)

**Complainant**  
**Respondent**

**HARERA**  
**GURUGRAM**

**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 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

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

Sr. No.	Particulars	Details
1.	Name of the project	'Astaire Garden', Sector 70-A, Gurugram, Haryana.
2.	Rera Registered/Not Registered	Registered 912 Of 2021
3.	Unit no.	E-56-SF ( on page no. 58 of complaint)
4.	Unit admeasuring	1090 sq. ft. ( on page no. 58 of complaint)
5.	Date of execution of flat buyer's agreement	23.02.2012 ( on page no. 48 of complaint)
6.	Building plan	03.05.2013
7.	Possession clause	<i>Possession Clause (5.1): Subject to Force Majeure as defined in Clause 14 and further subject to the Purchaser(s) having complied with all its obligations under the terms and conditions of this Agreement and the Purchaser(s) not being in default under any part of this Agreement including but not limited to the timely payment of each and every installment of the total sale consideration including DC, Stamp duty and other charges and also subject to the Purchaser(s) having complied with all formalities or documentation as prescribed by the Seller/Confirming Party, the Seller/Confirming Party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a</i>

		<p><i>period of 36 months from the date of sanctioning of the building plan or execution of Floor Buyers Agreement, whichever is later "Commitment Period") The Purchaser(s) further agrees and understands that the Seller/Confirming Party shall additionally be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc from DTCP under the Act in respect of the entire colony. (Emphasis supplied).</i></p>
8.	Due date of delivery of possession	03.11.2016 (including grace period of 180 days) (Calculated from the date of sanctioning of building plan as it being later)
9.	Total sale consideration	Rs 76,31,920/- (As per page no. 169 of reply)
10.	Total amount paid	Rs 54,19,209/- (As per page no. 169 of reply)
11.	Occupation certificate	16.09.2019 (As per page no. 166 of reply)
12.	Offer of possession	18.09.2019 (As per page no. 167 of reply)
13.	Conveyance deed	28.01.2020 (As per page no. 193 of reply)
14.	Grace period utilization	Grace period is allowed.

**B. Facts of the complaint:**

3. That in the year 2011, the original allottees were searching for a suitable flat/accommodations as per their standard and budget. The original allottees while searching for a home visited the office of the respondent company. The agents of the respondent company told the original allottees about the

moonshine reputation of the company and the agents of the respondent company made huge presentations about their project namely Astaire gardens at sector 70A, Gurugram and also assured that they have delivered several projects in the national capital region. The respondent handed over one brochure to the original allottees which portrayed the project like heaven and tried to hold the original allottee interest in every possible way and incited the original allottees for payments

4. That in 2011, the original allottees who were caught in the web of false promises of the agents of the respondent company, filed the application form for one flat/unit and opted for construction linked payment plan. Accordingly they were allotted one unit being E-56-SF in the above said project.
5. That on 30.09.2011, the original allottees executed an agreement to sell in favor of the complainants.
6. That the complainants were subjected to unethical trade practice as well as subject of harassment in the name and guise of a biased, arbitrary and one sided floor buyer's agreement. The respondent not only failed to adhere to the terms and conditions of the FBA dated 23.02.2012 but also illegally extracted money from the complainants by making false promises and statements.
7. That the respondent company sent one detailed FBA to the complainants and requested for signing the agreement which was signed on 23.02.2012 and returned to the builder, wherein as per the clause 2.2, page no. 9 of floor buyer's agreement, the total sale value of the unit (total consideration) payable by the allottees that are the complainants to the company i.e. the respondent includes the basic sale price ( basic sale price / BSP) of Rs. 56,88,002/-, development charges of Rs. 2,88,000/-, Club Membership Charges of Rs. 2,00,000/-, Interest

Free Maintenance Charges (IFMS) @ Rs. 50 sq. foot and Power Backup Installation Charges of Rs 20,000/- per KVA.

8. That as per the demands raised by the respondent, based on the payment plan, the complainants paid a sum of Rs. 7,204,444/- towards the said plot against total demands of Rs. 7,538,445/-.

W flat

9. That the respondent sent a letter cum invoice no. INV1920/H001901 dated 18.09.2019 for offer of possession for unit no. E-56-SF with demand of Rs. 2,546,710.05 wherein a demand for the basic sale price of Rs. 5,995,883.84, EDC/IDC charges of Rs. 288,000.00, Club Membership Charges of Rs. 200,000.00, Cost Escalation Charges of Rs 381,674.82, STP and Electrification Charges of Rs 125,896.68, VAT of Rs. 57,264.81 and GST of Rs. 303,048.00 were also raised.

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

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

a) Direct the respondent to pay delay possession charges at the prescribed rate of interest.

b) It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondent to provide all amenities, as assured in the brochure and as promised at the time of booking of the flat, as soon as possible, as elaborated in para M.

c) It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondent to refund the money collected towards the club membership charges to the complainants with interest as the construction of the club is yet to be started as mentioned in para N.

d) It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondent to prepare a plan for the completion of the club and demand money from the members in instalments as per the plan.



- e) It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondent to refund the amount collected towards the escalation charges which is not payable as elaborated in para O.
- f) It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondent to take the opinion of HVAT tax experts and communicate to the complainants along with detailed justification thereof.
- g) It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondent to take the opinion of GST experts about the quantum of the GST payable in the given circumstances by the complainants up to the deemed date of offering the possession of the apartments.
- h) It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondent to refund the amount collected towards STP charges of Rs. 125,896/- when the BBA did not carry any such condition.

**D. Reply by respondent:**

11. The respondent by way of written reply dated 05.01.2021 made the following submissions:
- i. That the present complaint under reply is not maintainable in as much as the conveyance deed for the unit in question has been duly executed between the parties on 28.01.2020. It is stated that the possession of the unit in question is with the complainants, needless to say that the possession and conveyance deed is executed as and when there are no issues/dues/outstanding pending between the parties.
  - ii. It is submitted that the respondent upon completion of construction with regard to the project and upon receipt of occupation certificate dated 16.09.2019 from the concerned departments, has issued offer of possession letter on 18.02.2020. In terms of the said offer of possession the complainants were requested to complete documentary formalities/ pay all previous dues. It is further stated that the complainant on

adequate examination and analysis of the contents of the offer of possession letter dated 18.02.2020 and, being satisfied on account of investigation conducted with regard to allotted unit and, all other related aspects, have taken physical possession of the allotted unit on 18.02.2020. Thereafter, the complainants further by virtue of incorporated clause/s and/or recital/s recorded within the Conveyance Deed dated 28.01.2020, got the same executed/registered in their favor without any demur or protest.

iii. The respondent being a customer centric organization and as a goodwill gesture provided a special discount of Rs. 4,02,150/- apart from the compensation of Rs. 3,44,700/- already offered to the complainants at the time of offering possession via letter dated 07.10.2019. Vide the aforesaid letter dated 07.10.2019 the complainants also agreed that all the grievances or claims of the complainants against the respondent have been settled and the complainants shall not raise any claim against the respondent at any time in the future with respect to any licences or approvals, development works, quality of construction, charges or taxes or any delayed possession compensation etc. However, the complainants erroneously proceeded to file the present vexatious complaint before this Hon'ble Authority to gain at the expense of the respondent, even though settlement has already been arrived at between the parties

iv. All other averments made in the complaint were denied in toto.

12. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the parties.

**E. Finding regarding jurisdiction of the authority:**

13. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

14. 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 completed territorial jurisdiction to deal with the present complaint.

**E.II Subject matter jurisdiction**

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

**Section 11(4)(a)**

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

**Section 34-Functions of the Authority:**

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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



**F. Findings on the relief sought by the complainant.**

17. It has been contended by the respondent that on execution of conveyance deed, the relationship between both the parties' stands concluded and no right or liabilities can be asserted by the respondent or the complainants against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case.
18. It is important to look at the definition of the term 'deed' itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (buyer and seller). It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a deed should be in writing and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the assets under consideration are immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration (usually monetary). Therefore, a 'conveyance deed' or 'sale deed' implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.
19. From the above, it is clear that on execution of a sale/ conveyance deed, only the title and interest in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not conclude the relationship or marks an end to the statutory liabilities and obligations of the promoter towards the said unit whereby the right, title and interest has been transferred in the name of the allottee on execution of the conveyance deed.

20. The authority has already taken a view in in **Cr no. 4031/2019 and others tiled as Varun Gupta V/s Emaar MGF Land Limited and others** has observed as under:

*47. ....the authority observes that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the said unit whereby the right, title and interest has been transferred in the name of the allottee on execution of the conveyance deed.*

21. Therefore, execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.

22. After consideration of all the facts and circumstances, the authority holds that even after execution of the conveyance deed, the complainant allottee cannot be precluded from his right to seek delay possession charges from the respondent-promoter.

23. Furthermore, the respondent states that it had already offered a special discount of Rs. 4,02,150/- apart from the compensation of Rs. 3,44,700/- already offered to the complainants at the time of offer of possession. On the contrary, the complainants state that the said letter was entered upon under duress and cannot be treated as settlement agreement. Furthermore, the subject of the said letter is "Discount Letter" not "Settlement Letter". After consideration of all the facts and circumstances, the authority is of view that possession was offered to complainants on 18.09.2019 alongwith a demand of Rs. 18,68,010/- against which respondent had provided them discount of Rs. 4,02,150/- vide discount letter dated 05.03.2020 which has been refereed as settlement by respondent although it is not settlement of dispute. The

respondent implies that the discount offered by it is a substitute for the statutory right of delayed possession charge enumerated in section 18 of the Act. After examination of all the documents it is concluded that the said contention is not valid as the delayed possession charge is a statutory right provided under the sec-18 of the Act and the discount provided being in nature of damages for breach of contract, it cannot be equated with delayed possession charge. Delayed possession charge is a separate remedy that supersedes and is not a substitute for any other form of compensation or relief for breach of contract. So, discount letter cannot be treated as settlement agreement w.r.t. delay possession charges and the complainants are hereby entitled for delay possession charge under section 18 of the Act of 2016.

**G.I Delay Possession Charges**

24. The complainant is a subsequent allottee. On 30.09.2011, the original allottees executed an agreement to sell in favour of the complainants. The Authority has decided this issue in the complaint bearing no. **4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Ltd.** wherein the Authority has held that in cases where subsequent allottee has stepped into the shoes of original allottee before the expiry of due date of handing over possession and before the coming into force of the Act, the subsequent allottee shall be entitled to delayed possession charges. So, the Authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession
25. The complainant intends 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."*

26. Clause 5 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

- (i) *"Clause 5.1- Subject to Force Majeure, as defined in Clause 14 and further subject to the Purchaser(s) having complied with all its obligations under the terms and conditions of this Agreement and the Purchaser(s) not being in default under any part of this Agreement including but not limited to the timely payment of each and every instalment of the total sale consideration including DC, Stamp duty and other charges and also subject to the Purchaser(s) having complied with all formalities or documentation as prescribed by the Seller/Confirming Party, the Seller/Confirming Party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a period of 36 months from the date of sanctioning of the building plan or execution of Floor Buyers Agreement, whichever is later ("Commitment Period"). The Purchaser(s) further agrees and understands that the Seller/Confirming Party shall additionally be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc. from DTCP under the Act in respect of the entire colony..."*

27. At the inception, it is relevant to comment on the pre-set possession clause of the floor buyer's agreement wherein the possession has been subjected to numerous terms and conditions and force majeure circumstances. The drafting of this clause is not only vague but so heavily loaded in favour of the promoters that even a single default by the allottee in fulfilling obligations, formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has

misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

**28. Admissibility of grace period:** The promoter has proposed to hand over the possession of the unit within a period of 36 months from the date of sanction of the building plan or execution of floor buyer's agreement, whichever is later. The buyer's agreement was executed on 23.02.2012 and date of sanctioning of building plan is 03.05.2013. So, the due date is calculated from the date of sanctioning of building plan i.e., 03.05.2013 which comes out to be 03.05.2016 being later. Further, it was provided in the buyer's agreement that promoter shall be entitled to a grace period of 180 days after the expiry of the said committed period for making offer of possession of the said unit. In other words, the respondent is claiming this grace period of 180 days for filing and pursuing of occupation certificate.

**29.** The Authority put reliance on the judgement of the Hon'ble Appellate Tribunal in appeal no. 433 of 2022 tilted as Emaar MGF Lamd Limited Vs Babia Tiwari and Yogesh Tiwari, wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant para is reproduced below:

*As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace*



*period so provided in the agreement for applying and obtaining the Occupation Certificate*

30. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Thus the due date of handing over of possession comes out to be 03.11.2016.

**31. Admissibility of delay possession charges at prescribed rate of interest:**

The complainants are seeking delay possession charges at the prescribed rate of interest on the amount already paid by them. 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. Rule 15 has been reproduced as under:

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

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

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

32. 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.

33. 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., 02.04.2024 is

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

34. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

*the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*

*the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

35. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

36. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 8 of the agreement, the possession of the subject apartment was to be delivered within 36 months from the date of execution of agreement or sanctioning of building plan whichever is later. For the reasons quoted above, the due date of possession is to be calculated from the date of sanctioning of building plan i.e., 03.05.2013.. Therefore, the due date of possession is calculated from the date of sanctioning of building plan and the said time period of 36 months expired on 03.05.2016.

As far as grace period is concerned, the same is allowed for the reasons quoted above. So, the due date of possession comes out to be 03.11.2016.

37. The respondent has obtained the occupation certificate on 16.09.2019. 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 allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 23.02.2012 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 23.02.2012 to hand over the possession within the stipulated period.
38. 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 16.09.2019. The respondent offered the possession of the unit in question to the complainants only on 18.09.2019. 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 complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically he has 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 i.e. 03.11.2016 (calculated from the date of sanctioning of building plan) till the date of offer of possession (18.09.2019) plus two months i.e., 18.11.2019. The complainants are further

directed to take possession of the allotted unit after clearing all the dues within a period of 2 months and failing which legal consequences as per the provisions of the Act will follow.

39. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at rate of the prescribed interest @ 10.85% p.a. w.e.f. 03.11.2016 till the date of offer of possession (18.09.2019) plus two months i.e., 18.11.2019; as per provisions of section 18(1) of the Act read with rule 15 of the Rules

**G.II (a) Direct the respondent to refund the amount collected towards the escalation charges which is not payable as elaborated in para-Q**

**(b) Direct the respondent to take the opinion of HVAT Tax experts and communicate to the complainant along with detailed justification thereof and direct order the respondent to take the opinion of GST experts about the quantum of the GST payable in the given circumstances by the complainant up to the deemed date of offering the possession of the apartment.**

**(c) Direct the respondent to refund the money collected towards the club membership charges to the complainant with interest as the construction of the club is yet to be started as mentioned in para-N.**

**(d) Direct the respondent to refund the amount collected towards STP charges of Rs. 125,896,68/- when the FBA did not carry any such condition**

40. The above mentioned reliefs no. G.II (a), (b), (c) and (d) as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.

41. It is important to note that the conveyance deed was executed between the parties on 28.01.2020. The conveyance deed is a legal document that transfers the title of property from one party to another, signifying the completion of the property transaction especially regarding payments related to the purchase

price, taxes, registration fees, and any other contractual financial commitments outlined in the agreement. However, despite the conclusion of the financial obligations, the statutory rights of the allottee persist if any provided under the relevant Act/Rules framed thereunder. Execution of conveyance deed is a sort of entering into a new agreement which inter alia signifies that both parties are satisfied with the considerations exchanged between them, and also that all other obligations have been duly discharged except the facts recorded in the conveyance deed. The said clause reproduced below as:

*3 The vacant and peaceful physical possession of the Unit has already been handed over by the Vendors to the Vendee and the Vendee acknowledges to have taken over the possession of the same after a detailed inspection of the Unit, on all material aspects including but not limited to area of the Unit, quality of construction, workmanship, materials used in construction, finishing fittings, fixtures, specifications, etc and the Vendee does not have any objection and is fully satisfied, with all aspects of the Unit. The Vendee further confirms that the Vendee has checked and verified the title of Confirming Vendors in the Land and is completely satisfied with respect to the same. Since the Vendee has completed due diligence of the Unit and the land underneath to the Vendee's complete satisfaction, therefore, the Vendee undertakes not to raise a dispute on any of the above mentioned aspects.*

42. It is pertinent to mention here that complainant took the possession and got the conveyance deed executed, without any demur, protest or claim. The complainant has neither raised any grievance at the time of taking over the possession or at the time of execution of the conveyance deed, nor reserved any right in the covenants of the conveyance deed, to claim any refund of preferential location charges or any other charges. Also it is a matter of record that no allegation has been levelled by the complainant that conveyance deed has been got executed under coercion or by any unfair means.



43. The Authority is of view that after the execution of the conveyance deed between the complainant and the respondent, all the financial liabilities between the parties come to an end except the statutory rights of the allottee including right to claim compensation for delayed handing over of possession and compensation under section 14 (3) and 18 of the RERA Act, 2016. In view of the above, the complainant cannot press for any other relief with respect to financial transaction between the parties after execution of conveyance deed except the statutory obligations specifically provided in the Act of 2016.

#### **G. Directions of the Authority**

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

I. (a) **Delay Possession Charge:** The respondent is directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 03.11.2016 till offer of possession i.e., 18.09.2019 till plus two months i.e., 18.11.2019 to the complainant(s) as per section 19(10) of the Act.


(b) The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoter to the allottees respectively within a period of 90 days from date of this order as per rule 16(2) of the rules after deduction of amount already deducted or adjusted in statements of account towards discount/compensation by the respondent.

(c) The respondent-builder is directed to provide all the amenities and facilities as per buyer's agreement and plan approved by the competent Authority.

45. Complaint stands disposed of.

46. File be consigned to registry.

  
Ashok Sangwan  
Member

  
Arun Kumar  
Chairman

  
Vijay Kumar Goyal  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 02.04.2024**

**HARERA**  
GURUGRAM