BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**2203 of 2023**
Date of filing complaint	**17.05.2023**
First date of hearing	**27.09.2023**
Date of decision	**03.04.2024**

Sandeep Mehra
Resident of: C-77, II Floor, Rosewood City, Sector 59, Gurugram, Haryana 122001 **Complainant**

Versus

St. Patricks Realty Private Limited
Regd. office: 3rd Floor, Tower- D, Global Business Park, MG Road, Gurugram, Haryana **Respondent**

CORAM:
Shri Ashok Sangwan **Member**

APPEARANCE:
Sh. Kuldeep Kohli (Advocate) Complainant
Sh. Venket Rao (Advocate) Respondent

ORDER

1. The present complaint was inadvertently clubbed along with a bunch of three other complaints with lead complaint case no. being 1948 of 2023 titled as, "Mohinder Pal Rawal and Renu Sethi and Kapil Rawal versus St. Patrick's Realty Private Limited." A rectification application dated 30.05.2024 has been filed by the respondent requesting the Authority to rectify the said inadvertent error with respect to the captioned complaint and pass a separate order after adjudication of the proper facts of the case. Vide hearing dated 03.07.2024, the Authority decided to pass a separate order to ensure fair adjudication. Hence, this detailed order.

2. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real -Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provisions 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

3. The particulars of the project, the details of sale consideration, the amount paid by the complainants, the date of proposed handing over of the possession, and the 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.	Nature of the project	Group Housing Complex
3.	Area of the project	10.925 acres
4.	RERA registered/ not registered and validity status	**Registered** Registration no. 150 of 2017 dated 28.08.2017 valid upto 31.07.2022
5.	DTCP license no. and validity status	84 of 2014 dated 09.08.2014 valid upto 08.08.2024
6.	Name of licensee	Ravinder Singh-Balkaran-Vijay Raghav
7.	Unit no.	202, 2nd Floor, Tower H (As per BBA at page no. 41 of complaint)
8.	Unit area admeasuring	2407 sq. ft. super area (Earlier) 2570 sq. ft. super area (Final) (An increase of 163 sq. ft.) (As per offer of possession at page no. 133 of reply)
9.	Payment Plan	Subvention payment plan (Page no. 61 of complaint)

10.	Date of execution of buyer's agreement	25.07.2017 (Page no. 40 of complaint)
11.	Possession clause	**7.1 Possession clause** *"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 the timely payment of sale price, other charges as per Details of Payment(Annexure-1), Payment Plan (Annexure-2) and all other payments as per terms of this Agreement including payment of interest by the Allottee(s). In case of default in aforesaid payments by the Allottee(s) or violation or noncompliance of any term of this Agreement, the Allottee(s) shall not be entitled to claim and the Company shall not be bound to give the possession of the said asp 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."* ***(Emphasis supplied)*** (BBA at page no. 49 of complaint)
12.	Due date of possession	25.01.2021 (Calculated from date of execution of BBA i.e., 25.07.2017 along with 6 months grace period in lieu of Covid-19)
13.	Basic sale consideration	Rs. 1,32,33,205/- (Initially) (As per BBA at page no. 42 of complaint)
14.	Amount paid by the complainants	Rs. 1,47,73,182/- (Page no. 80 of complaint and admitted by respondent at page 4 of written submissions dated 18.04.2024)
15.	Occupation certificate	13.01.2023 (Page no. 130 of reply)
16.	Offer of possession	16.02.2023 (Page no. 73 of complaint)

B. Facts of the complaint:

4. The complainant has made the following submissions vide its complaint dated 17.05.2023 and written submissions dated 24.01.2024:

a) That the complainants booked unit no. H-202 in tower H on second floor in "Aqua Front Tower" at Central Park Flower Valley, Sohna, Gurugram. Thereafter, the apartment buyer agreement dated 25.07.2017 was executed between the parties.

b) That as per Clause 7.1 of the said apartment buyer's agreement, possession of the said unit was to be delivered within a period of 36 months and therefore, the due date of offer of possession was 25.07.2019.

c) That an invalid offer of possession was made by the respondent on 16.02.2023, after a considerable delay of 33 months, together with a statement of final dues, raising a demand of Rs. 31,26,255/- addressed by the authorized signatory of the respondent company to the complainants.

d) That the grievance of the complainants relates to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the respondent, with respect to the apartment offered to the complainants including a few demands which are not as per the agreement and hence are unjustified and illegal.

e) That the said offer of possession specified various demands which are not part of the builder buyer agreement and hence not payable by the complainants-

Sr. No.	Demands Raised	Amount
1.	Increase in super Area from 2407 sq. ft. to 2570 sq. ft.	Additional BSP of Rs. 8,96,141/-
2.	Additional EDC/IDC	Rs. 19,529/-
3.	Power Back up Charges	Rs. 1,25,000/-
4.	Water Connection Charges	Rs. 64,250/-
5.	Electricity Facility Charges	Rs. 3,08,400/-
6.	Escalation Charges	Rs. 14,12,935/- @ 10%
7.	Covered car parking charges	Rs. 3,00,000/-

	Total	**Rs. 31,26,255/-**

f) That the complainants have been offered the possession of the unit measuring 2570 sq. ft. whereas the complainants had booked a unit admeasuring 2407 sq. ft. That the complainants contending all these demands being illegal and unjustified had placed their reliance on Section 14 of the Act of 2016 as well as opinion of this Authority in Varun Gupta Vs Emmar MGF, and Pawan Gupta Vs Experion Developers Pvt Ltd.

g) That at the time of offer of possession, area of the apartment had been increased, which as per the Honourable Supreme Court is illegal and wrong. Hence the complainants are not liable to pay the additional BSP amount of Rs. 8,96,141/-, additional EDC/IDC of Rs. 19,529/-, additional taxes to both the Centre and the State, government levies, additional stamp duty, additional maintenance to the society, additional advance towards the maintenance and the perpetual inflated maintenance bills through the tenure of ownership.

h) That the question whether for covered car parking the builder can charge or not, it has been held in the recent judgment of this Authority in Complaint case no. 4031 of 2019 titled as, "Varun Gupta Vs. Emaar India Limited" that keeping in view the various provisions of the builder buyer's agreement if separate covered car parking has been provided by the builder other than car parking in the basement, then the builder is entitled to charge for car parking as per the builder buyer agreement. But if the builder has provided for reserved car parking only in the basement area, then the same can also be charged only when the allotted parking area is not included in the super area. That in the present case the allotted car parking is included in the super area and therefore, cannot be charged cannot be charged to the complainants. Hence, the

demand for the covered car parking is required to be withdrawn from the offer of possession.

i) That the occupation certificate is always provided by the competent authority to the promoter only after the completion of building when the same is ready for possession and occupation. Until and unless the building has electricity which also includes the power backup system and water connections, how can the same be said fit for occupation. Electricity is an eye and water is the soul of dwelling unit. Therefore, if these two facilities are not provided to the allottee in the unit, the allottee himself cannot survive. Hence, charging under these heads is not justifiable as well. Also, in terms of the judgment of this Authority in Complaint case no. 4031 of 2019 titled as, "Varun Gupta Vs. Emaar India Limited", the promoter should not charge electrification charges from the allottees while issuing the offer of possession letter.

j) That in the present case the Club is not yet ready and hence it would be unjust and illegal to collect the money towards the Club Membership charges, therefore this demand needs to be deleted from the offer of possession in light of view of this Authority in Complaint case no. 4031 of 2019 titled as, "Varun Gupta Vs. Emaar India Limited" wherein it was held that if the club has come into existence and the same is operational or is likely to become operational soon, i.e., within a reasonable period of around six months , then the demand raised by the respondent for the said amenity shall be discharged by the complainants as per the terms and conditions stipulated in the agreement.

k) That the street lighting services form an integral part of the internal development works and the promoter is duty bound to provide internal development work as per conditions of license and for obtaining part completion/completion certificate. It is further duty of the colonizer to arrange the electric connection from outside source for electrification of

their colony from Haryana Vidhyut Parsaran Nigam/ Dakshin Haryana Bijlee Vitran Nigam Limited, Haryana. The installation of internal electricity distribution infrastructure as per the peak load requirement of the colony shall be the responsibility of the colonizer for which the colonizer will be required to get the electric services plan/estimates approved from the agency responsible for installation of external electrical services and complete the same before obtaining completion certificate for the colony. That in Complaint case no. 4031 of 2019 titled as, "Varun Gupta Vs. Emaar India Limited", the Authority was of the considered opinion that if the allottee had already paid these charges, then it would be unjust for him to pay further charges under the head "electrification charges" despite there being a condition for payment of these charges in the builder buyer agreement, the allottee should not be made or compelled to pay amount towards electrification charges.

l) That the respondent is liable to pay delayed possession charges from the due date of delivery of possession till valid offer of possession and the complainants pray that the interest due to the complainants may kindly be adjusted against the amount payable to respondent after deduction of illegal charges. That the complainants are willing to pay the balance amount based on valid offer of possession immediately before the possession is handed over to them.

C. Relief sought by the complainants:

5. The complainant has sought the following relief(s):

i. Direct the respondent to pay delayed possession charges from the due date of delivery of possession as per the buyer's agreement dated 25.07.2017 till the offer of valid offer of possession.

ii. Direct the respondent to handover the physical possession of the unit in habitable condition.

iii. Direct the respondent to issue a fresh offer of possession after withdrawing all the illegal demands.

iv. Direct the respondent not to charge anything which is not a part of the apartment buyer's agreement.
v. Direct the respondent not to charge holding charges.
vi. Direct the respondent not to raise any demands towards advance maintenance charges.
vii. Direct the respondent not to cancel the allotment till the disposal of this matter.
viii. Direct the respondent not to create third party rights till the disposal of this matter.
ix. Direct the respondent to provide 8 months period to allow interior work for the unit from the revised offer of possession.

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) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

7. The respondent has made the following submissions vide its reply dated 22.09.2023 and written submissions dated 15.01.2024:

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 29.04.2017, the complainants expressed their interest for booking a 4BHK luxury apartment under the subvention plan in the aforesaid project.

c) That as per clause 2.9 of the application form, the complainant was aware of the terms that the sale price has been calculated upon the basis of total super area of the apartment and that the same is subject to change upon final completion of the project.

d) That the respondent vide allotment letter dated 25.07.2017, provisionally allotted an apartment bearing no. 202, second floor, tower H in the said project under the subvention plan.

e) That on 25.07.2017, an apartment buyer agreement was executed between the parties at an agreed basic sale price of Rs. 5497.80/- per sq. ft. i.e., Rs. 1,32,33,205/- 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 circumstance 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. Further, the promoter is also entitled for 70 days extension till 2021 when

construction was banned by NGT and EPCA. After considering all the force majeure circumstances and reasons beyond the control of the respondent, the possession was to be offered on or before 05.01.2022.

i) That on 24.02.2018, a tripartite agreement was executed between the complainant, M/s PNB Housing Finance Limited and the respondent, wherein the complainants have availed the loan facility of Rs. 1,00,00,000/- against the apartment in question.

j) That in terms of recital E of the said agreement, the respondent was under an obligation to pay pre-EMIs on behalf of the complainants for the entire liability period as enshrined in Schedule I of TPA. That therefore, the respondent was under obligation to pay Pre-EMI on behalf of the complainants till 30.06.2020 only.

k) That the respondent in compliance of the above terms had already paid an amount of Rs. 41,59,142/- without any delay and default, in terms of the tripartite agreement on behalf of the complainants and the same was compensatory in nature.

l) That even being aware of the payment schedule the complainants delayed the instalments and owing to such default, the respondent herein was constrained to issue intimation of Payment due letter dated 16.11.2017 asking the complainants to pay an outstanding amount of Rs. 48,57,441/- due as per the subvention payment plan, to be paid by 15.12.2017. However, the complainants failed to pay the same.

m) That on 15.03.2019, respondent sent a letter for payment of instalment due and requested the complainants to pay Rs. 21,34,975/- to be payable by 30.03.2019. That a reminder dated 13.06.2019 was also sent however, the complainants delayed in making the payment.

n) 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 up to 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. 8,96,141/- on account of increase in super area from 2407 sq. ft. to 2570 sq. ft. as proper justification for the said increase had been provided.

o) That in terms of clause 1.5 of the agreement, the complainants had agreed to pay the EDC/IDC without any demur. It is pertinent to note that EDC/IDC is directly linked to the total super area of the apartment and therefore the same is subject to change upon change in super area of the apartment. That in terms of clause 1.10 of the agreement, it was agreed that in case of change in final super area, the company shall be entitled to recalculate the sale price and other charges of the unit in question. Further, as per Clause 6.4 of the Agreement, it was agreed between the parties that in case of increase in Super Area, the allottee shall be under obligation to pay for additional BSP and other applicable charges. It was further agreed by both the parties under Annexure I to the Agreement that in case of addition to the Basic Sale Price of the Apartment, the allottee shall pay additional EDC/IDC.

p) As per clause 10.3 of the Agreement the complainants had agreed to pay their respective share of the Power Backup Charges as and when demanded by the Respondent or the maintenance agency. While executing the Agreement, as per the Annexure – I to the agreement the Complainants themselves had acknowledged and undertook to pay the Power Backup Charges of Rs. 1,25,000/- and were also aware that the

said charges forms part of the total cost of the respective Apartment but had resorted to dispute upon the same with ill and malafide intention. Therefore, the Respondent herein is entitled for Power Backup Connection Charges of Rs. 1,25,000/- as per the terms of the Agreement.

q) 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.

r) 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 and the same was agreed by the complainants while entering the shoes of original allottee. 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.

s) That in accordance with the provision of clause 1.3 of the Agreement, the complainants agreed to pay Rs. 3,00,000/- for the car parking. Despite after undertaking to pay the car parking charges, the complainants with ill intention are now disputing the said charged at later stage. The Hon'ble Supreme Court in the matter of Wg. Cdr. Arifur Rehman Khan and Ors. vs. DLF Southern Homes Pvt. Ltd. Civil Appeal No. 6239 of 2019, has specifically held that if the Buyer had specifically agreed for car parking charges in the Agreement, therefore, the Builder charging the same cannot be termed as deficiency in service. Further, this Ld. Authority while adjudicating upon bunch matters pertaining to the issue of the car parking in 'Varun Gupta vs Emaar MGF Ltd. 4031 of 2019', has observed that issue regarding parking is concerned, the matter is to be dealt with as per the provisions of the builder buyer's agreement wherein the said agreement has been entered into before coming into force of the Act.

t) That as far as delayed possession charges are concerned, the complainants have paid only partial amount from their own pocket, i.e., Rs. 9,00,000/- and rest of the amount, i.e., Rs. 79,53,108/- was paid through loan against which the respondent had paid huge pre-EMI's amount to Rs. 23,88,015/-, therefore, no loss was occurred by the complainants.

u) That since the complainants herein were enjoying the benefits under the subvention scheme payment plan and was not required to pay any pre-EMI's till offer of possession against the disbursed loan amount, the respondent is not liable pay the delayed possession interest to the complainants for the said amount and the same is compensatory in nature. In case, the respondent herein is made to pay both the delayed

possession interest and also the pre-EMI's then the same shall amount to double jeopardy, as the pre-EMI of Rs.41,59,142/- already paid itself amounts to compensatory in nature.

v) That the respondent had paid pre-EMIs as per the agreed terms and conditions of the tri-partite agreement on behalf of the complainant. The said amount was paid to compensate the complainant to compensate them and to prevent them from any financial losses during the liability period.

w) That the sole purpose of delayed possession interest is to compensate the allottees against the loss suffered by them due to delay in possession. However, in the present matter the complainant has already received interest in the form of pre-EMIs which was paid on their behalf by respondent to the bank.

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 record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents made by both the parties.

E. Jurisdiction of the authority:

10. 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

11. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

12. 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.*

13. 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 complainant at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objections regarding Force Majeure

14. The respondent-promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as orders passed by the Hon'ble SC to stop construction, notification of the Municipal corporations Gurugram, Covid 19, etc. The plea of the respondent regarding various orders of the Supreme Court, NGT, etc., and all the pleas advanced in this regard are devoid of merit. The orders passed by SC banning construction in the NCR region were for a very short period, and such exigencies should have been accounted for at the very inception itself and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Further, there may be cases where allottee has not paid instalments regularly but the allottee cannot be expected to suffer

because of few allottees. Thus, the promoter respondent cannot be given any leniency on the basis of aforesaid reasons, and it is a well-settled principle that a person cannot take benefit of his own wrong.

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

15. In the present case, the respondent was liable to complete the construction of the project and handover the possession of the said unit by 26.01.2021. 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 complainant is 25.07.2020 i.e. after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As such the due date for handing over of possession comes out to 25.01.2021.

G. Findings on relief sought by the complainant.

G.1 Direct the respondent to pay delayed possession charges from the due date of delivery of possession till the offer of valid offer of possession.

16. In the present complaint, the complainant intend to continue with the project and is 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."*

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

"Clause 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....."*

18. **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. 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.*

19. 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.

20. 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., 03.07.2024 is @ 8.85 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

21. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the

promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

> *"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
> *Explanation. —For the purpose of this clause—*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

22. 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 them in case of delayed possession charges.

23. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of buyer's agreement executed between the parties on 25.07.2017, the possession of the booked unit was to be delivered within 36 months from the date of execution of buyer's agreement (25.07.2017) which comes out to be 25.07.2020. The grace period of 6 months is in lieu of covid-19 is allowed. Therefore, the due date of handing over possession comes out to be 25.01.2021. Occupation certificate was granted by the concerned authority on 13.01.2023 and thereafter, the possession of the subject flat was offered to the complainants on 16.02.2023. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations

and responsibilities as per the buyer's agreement dated 25.07.2017 to hand over the possession within the stipulated period.

24. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 13.01.2023. The respondent offered the possession of the unit in question to the complainants only on 16.02.2023, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 month of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (16.02.2023) which comes out to be 16.04.2023.

G.II Direct the respondent to handover the physical possession of the unit in habitable condition.

25. The respondent has obtained the occupation certificate from the competent authority on 13.01.2023 and offered the possession of the allotted unit vide letter dated 16.02.2023. 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 complainant is directed to take the possession of the allotted unit after making payment of outstanding dues, if any within a period of 2 months.

26. The respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement entered into between the parties.

G.III Direct the respondent to issue a fresh offer of possession after withdrawing all the illegal demands.

G.IV Direct the respondent not to charge anything which is not a part of the apartment buyer's agreement.

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

28. In the present complaint, the allottees have disputed various charges being seeked from them at the time of offer of possession by the respondent like increase in BSP owing to increase in super area, additional EDC/IDC, power backup charges, club membership charges, water connection and electricity connection charges, escalation charges and covered car parking charges. 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. Increase in BSP owing to increase in super area of the allotted unit.

29. The complainant states that the area of the said unit was increased from 2407 sq. ft. to 2570 sq. ft. vide offer of possession dated 16.02.2023 without giving any prior intimation to, or by taking any written consent from the allottee. The respondent in its defence submitted that increase in super area was duly agreed by the complainant at the time of booking/agreement and the same was incorporated in the buyer agreement. Relevant clause 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 later 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.

30. Considering the above-mentioned facts, the authority observes that the respondent has increased the super area of the flat from 2407 sq. ft. to 2570 sq. ft. vide offer of possession dated 16.02.2023 with increase in area of 163 sq. ft. i.e. 6.77% without any justification or prior intimation to the complainant.

31. That in ***NCDRC*** consumer ***case no. 285 of 2018 titled as Pawan Gupta Vs*** Experion ***Developers Private Limited***, it was held that the respondent is not entitled to charge any amount on account of increase in area. The relevant part of the order has been reproduced hereunder: -

The complaints have been filed mainly for two reasons. The first is that the opposite party has demanded extra money for excess area and second is the delay in handing over the possession. In respect of excess area, the complainant has made a point that without any basis the opposite party sent the demand for excess area and the certificate of the architect was sent to the complainant, which of a later date. The justification given by the party that on the basis of the internal report of the architect the demand was made for

excess area is not acceptable because no such report or any other document has been filed by the opposite party to prove the excess area. Once the original plan is approved by the competent authority, the areas of residential unit as well as of the common spaces and common buildings are specified and super area cannot change until there is change in either the area of the flat or in the area of any of the common buildings or the total area of the project (plot area) is changed. ***The real test for excess area would be that the opposite party should provide a comparison of the areas of the original approved common spaces and the flats with finally approved common spaces/buildings and the flats. This has not been done. In fact, this is a common practice adopted by majority of builders/developers which is basically an unfair trade practice. This has become a means to extract extra money from the allottees at the time when allottee cannot leave the project as his substantial amount is locked in the project and he is about to take possession. There is no prevailing system when the competent authority which approves the plan issues some kind of certificate in respect of the extra super area at the final stage. There is no harm in communicating and charging for the extra area at the final stage but for the sake of transparency the must share the actual reason for increase in the super area based on the comparison of the originally approved buildings and finally approved buildings. Basically, the idea is that the opposite party allottee must know the change in the finally approved lay-out and areas of common spaces and the originally approved lay-out and areas. In my view, until this is done, the opposite party is not entitled to payment of any excess area.*** *Though the Real Estate Regulation Act (RERA) 2016 has made it compulsory for the builders/developers to indicate the carpet area of the flat, however the, problem of super area is not yet fully solved and further reforms are required.*

32. In view of the above, the Authority observes that the increase in a super area was intimated to the complainants only at the time of offer of possession and not before. Further, no justification and intimation was made to the complainant in respect of increase in area. Therefore, the respondent cannot charge any amount from the complainant merely on account of the clause in the builder buyer agreement without providing proper justification and specific details regarding the increase in the super area/carpet area.

B. Escalation charges.

33. The complainant took the 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 complainant 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. The above said clause deals with the escalation charges where the complainant are liable to pay the escalation cost to a maximum of 10%. Perusal of case file reveals that justification for cost escalation had been provided by the respondent at page 129-129B of its reply (Annexure R11). The respondent has explained the rationale behind the price escalation for the subject unit, however, failed to specify the exact timing of this escalation. It is plausible that the escalation resulted from actions or decisions made by the respondent themselves. Without clarity on the timeline, it is difficult to determine fault or allocate responsibility fairly as precise details regarding when the escalation occurred are crucial for an equitable assessment. Therefore, if the escalation occurred before the due date of possession, the complainant shall be responsible for paying the escalated amount to the respondent. However, if the escalation occurs post the due date of possession, the respondent must bear it itself as a result of his own undoing.

C. Club Membership Charges.

35. Perusal of case file itself reveals that club membership charges amounting to Rs. 3,50,000/- were optional. These charges would only be payable if the complainant choose to avail themselves of the club membership. This understanding was explicitly agreed upon between the parties as specified in the apartment buyer agreement. Relevant 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):*
>
> .....
>
> *(a) Club Membership Charges of Rs. 3,50,000/-, if the Allottee opts for the facility and takes membership of the Club at the time of Application."*

(Emphasis supplied)

36. Also, in the case of ***Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021***, the Hon'ble Authority had already decided that if the club has come into existence and the same is operational or is likely to become operational soon, i.e., within reasonable period of around 6 months, the demand raised by the respondent for the said amenity shall be discharged by the complainant as per the terms and conditions stipulated in the builder buyer's agreement. However, if the club building is yet to be constructed, the respondent should prepare a plan for completion of the club and demand money regarding club charges and its membership from the allottees only after completion of the club.

D. Additional EDC/IDC.

37. The complainants took the plea that the respondent-builder has arbitrarily imposed additional EDC/IDC at the time of offer of possession. The respondent-builder in its defense submits that additional EDC/IDC charges were 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 charges was comprehensively set out in the buyer agreement. The said clause of the agreement is reproduced hereunder: -

"1.5 The Allottee(s) shall also pay the EDC, IDC, IAC and other charges levied by on the mentioned in the Details of Payment annexed as Annexure 1 and as per Plan annexed as Annexure 2. Any future levy in the existing levy in respect of the charges herein, by the Government to be payable by the Company with prospective or retrospective effect shall also be payable by Allottee(s) to the Company in the same proportion."

38. In light of the aforementioned facts, the Authority is of the view that the said demand for additional EDC/IDC is valid since 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. Hence, the respondent is justified in charging the said amount. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the additional EDC/IDC, then the promoter will be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant viz- à-viz the total area of the particular project. The complainant will also be entitled to get proof of all such payment to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.

E. Power Backup Charges.

39. The complainant took the plea that the respondent-builder has arbitrarily imposed power backup charges at the time of offer of possession. The respondent-builder in its defence submits that power backup charges were 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 charges was comprehensively set out in the buyer agreement. The said clause of the agreement is reproduced hereunder: -

"10.3 The Company shall provide the facility of power back up in the Colony and the load/extent of power back-up upto 5KV @ Rs. 25,000/- per KV. The allottee agrees to take connection of the power back up facility in of this clause. The allottee also agrees to pay the share as determined by the Company or Agency, as the case

may be, for the including for providing the facility of power back up, failing which the same shall be treated as unpaid portion of the total sale price payable by the allottee for the said Apartment. In case the Allottee needs extra power back up, the Company at its discretion may provide such extra power back up subject to availability and on payment of such charges as may be decided by the company."

40. As per clause 10.3 and Annexure-1 of the builder buyer agreement dated 26.07.2017, the complainants had agreed to pay the cost of power backup charges over and above the basic sale price. The cost of parking of Rs. 1,25,000/- has been charged exclusive to the basic sale price of the unit as per the terms of the agreement. Accordingly, the respondent is justified in charging the same from the complainants.

F. Covered Car Parking Charges.

41. The complainants took the plea that the respondent-builder has arbitrarily imposed covered car parking charges at the time of offer of possession. The respondent-builder in its defence submits that covered car parking charges were 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 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):

.....

(g) Reserved car parking space charges @Rs. 3,00,000/- each."

(Emphasis supplied)

42. In the present matter, the subject unit was allotted to the complainant vide builder buyer agreement dated 25.07.2017 and the respondent had charged a sum of Rs. 3,00,000/- on account of car parking charges. As per clause 1.3(g) and Annexure 1 of the builder buyer agreement, the complainants had agreed to pay the cost of reserved car parking charges over and above the basic sale price. The cost of parking of Rs. 3,00,000/- has been charged exclusive to the basic sale price of the unit as per the terms of the agreement.

Accordingly, the respondent is justified in charging the same in view of the decision passed by this Authority in complaint bearing no. 4031 of 2019 titled as "***Varun Gupta Vs. Emaar MGF Land Limited***" decided on 12.08.2021.

G. Water and Electricity Connection Charges.

43. 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 defence submits that water and electricity connection charges were 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 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)**

44. 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. Moreover, this issue has also already been dealt with by the authority in complaint bearing no. 4031 of 2019 titled as "***Varun Gupta Vs. Emaar MGF*** Land ***Limited***" decided on 12.08.2021, wherein it was held that these connections are applied on behalf of the allottee and allottee has to make payment to the concerned department on actual basis. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the abovesaid connections including security deposit provided to the units,

then the promoters will be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant viz- à-viz the total area of the particular project. The complainant/allottee will also be entitled to get proof of all such payment to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.

45. Therefore, the illegal demands raised in the offer of possession shall not be payable by the complainants, but the offer of possession remains valid.

G.V Direct the respondent not to charge holding charges.

46. 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.

47. 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."

(Emphasis Supplied)

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

G.VI Direct the respondent not to raise any demands towards advance maintenance charges.

49. Advance maintenance charges accounts for the maintenance charges that builder incurs while maintaining the project before the liability gets shifted to the association of owners. Builders generally demand advance maintenance charges for 6 months to 2 years in one go on the pretext that regular follow up with owners is not feasible and practical in case of ongoing projects wherein OC has been granted but CC is still pending.

50. This issue has already been dealt with by the authority in complaint bearing no. 4031 of 2019 titled as "***Varun Gupta Vs. Emaar MGF Land Limited***" decided on 12.08.2021, wherein it was held that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottees even in those cases wherein no specific clause has been prescribed in the agreement or where the advance maintenance charges have been demanded for more than a year.

H. Directions issued by the Authority:

51. 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 functions entrusted to the Authority under section 34(f) of the Act of 2016:

i. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of a delay from the due date of possession

till the date of offer of possession plus two months, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, ibid. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, ibid. Further, an amount of Rs.41,59,142/- paid by the respondent towards pre-EMI(s) shall be adjusted towards delay possession charges to be paid by the respondent.

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

iii. 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 are directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.

iv. The respondent is directed to handover the physical possession of the allotted unit to the complainants with completion in all aspects of buyer's agreement.

v. 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.

vi. The respondent shall not demand the advance maintenance charges for more than one year from the allottees even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

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

52. Complaint stand disposed of.

53. Files be consigned to the Registry.

Dated: 03.07.2024

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