

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

Complaint no.: 7335 of 2022
Date of filing: 23.11.2022
Order pronounced on: 22.02.2024

Krishan Gopal Gupta
R/o:- House no.503, Prakriti appts, Plot no.26, Sector 6,
Dwarka, Delhi-110075

Complainant

Versus

Shree Vardhman Infrahome Pvt. Ltd.
Regd. Office:- 301, 3rd floor, Indraparkash Building, 21-
Barakhamba Road, New Delhi-110001

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Sushil Yadav (Advocate)
Shri Gaurav Rawat (Advocate)

Complainant
Respondent

ORDER

1. This 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 provision of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

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A. Unit and project related details.

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

S. N.	Particulars	Details
1.	Name and location of the project	"Shree Vardhman Flora", village Badshapur, Sector-90, Gurugram
2.	Project area	10.881 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	23 of 2008 dated 11.02.2008 valid upto 10.02.2025
5.	Name of the Licensee	Moti Ram
6.	RERA registered/ not registered and validity status	Registered Registered vide no. 88 of 2017 dated 23.08.2017 valid upto 30.06.2019
7.	Unit no.	107, Tower C2 (page 14 of complaint)
8.	Unit area admeasuring	1300 sq. ft. (super area) (Page 14 of complaint)
9.	Date of execution of buyer agreement in favour of original allottee i.e. Priyanka Sangwan	18.01.2012 (Page 12 of complaint)
10.	Endorsement in name of subsequent allottee (Raman Bhardwaj)	16.04.2012 (page 33 of complaint)
11.	Endorsement in name of subsequent allottee by Mr. Raman Bhardwaj (Krishan Gopal Gupta/complainant)	03.11.2012 (page 34 of complaint)
12.	Possession clause	<i>14 (a) Possession The construction of the flat is likely to be completed within a period of thirty six (36) months of commencement of construction of the particular tower/block in which the flat is located with a grace period of 6 months or receipts of sanction of building</i>

		<i>plans/revised plans and all other approvals subject of the building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency /workforce and circumstances beyond the control of company and subject to timely payments by the buyer in the said complex. (Emphasis Supplied)</i>
13.	Date of commencement of construction	10.03.2012 (page 66 of reply)
14.	Due date of possession	10.09,2015 (calculated from date of commencement of construction i.e. 10.03.2012 including grace period of 6 months being unqualified and conditional)
15.	Total sale consideration	Rs.44,05,993/- (page 61 of reply)
16.	Amount paid by the complainant	Rs.44,94,254/- (as per customer ledger dated 13.09.2023 page 66 of reply)
17.	Occupation certificate	02.02.2022 (page 24 of reply)
18.	Offer of possession	22.04.2022 (page 50 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the respondent advertised their forthcoming project "Shree Vardhman Flora" in various leading newspapers, promising various advantages such as world-class amenities and timely completion/execution of the project. Relying on these promises, the original allottee booked a unit admeasuring 1300 sq. ft. in the respondent's project for a total sale consideration of Rs.45,65,269/-. On 03.11.2012, the former buyer, Mr. Raman Bhardwaj, endorsed the unit in

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- favour of the complainant. The complainant made a payment of Rs.44,85,450/- to the respondent via different cheques on different dates.
- II. That the flat buyer's agreement was executed on 18.01.2012 between the parties for the unit no.107, tower C2 admeasuring 1300 sq. ft. super area. As, per the clause 14(a) of the agreement, the respondent agreed to deliver the possession of the unit within 36 months from the date of commencement of construction, i.e., 25.01.2012. However, the complainant upon visiting the site, found that the construction work was not in progress, and the respondent provided false assurances about the project's progress.
- III. That despite receiving more than 98% of the payments on time for all the demands raised by the respondent, the respondent failed to deliver the possession of the allotted unit to the complainant within the stipulated period. The construction of the block in which the complainant unit was booked was not completed within the promised time, indicating the ulterior motive of the respondent to extract money fraudulently.
- IV. That the complainant received an offer of possession on 22.04.2022 from the respondent but when the complainant enquired about the same it came to the knowledge that respondent had not obtained an occupation certificate from the competent Authority and the unit was not in a habitable condition.
- V. That the respondent with mala-fide, dishonest motives intention cheated and defrauded the complainant, causing disruption in living arrangements, mental torture, agony, and severe financial losses. The respondent offer to pay compensation at a nominal rate of Rs.5/- per sq. ft. for every month of delay is unjust, and the respondent has exploited the complainant by not

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providing possession of the flat even after a delay from the agreed possession plan.

- VI. That the complainant has requested the respondent several times, through telephonic calls and personal visits, to deliver possession of the flat in question along with prescribed interest on the amount deposited by the complainant, but the respondent has flatly refused to do so. This indicates a pre-planned effort to defraud the complainant with wrongful gains and causes wrongful loss to the complainant.
- VII. That on the ground of parity and equity the respondent be subjected to pay the same rate of interest respondent is liable to pay interest on the amount paid by the complainant from the promise date of possession till the unit is actually delivered to the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent to pay delayed possession charges along with prescribed rate of interest.
5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

- I. That the complaint filed under Section 31 of the Act, 2016, is not maintainable as no violation of the Act has been established. A complaint under Section 31 can only be filed after a violation has been established by the authority under Section 35. Since no such violation has been proven, the complaint should be dismissed. Additionally, Section 18 of the Act does not apply retroactively, and therefore cannot be applied to transactions entered into before the Act came into force.

- II. The residential project "Shree Vardhman Flora" has been developed by the respondent on land granted under License No. 23 of 2008. The construction of the project has been completed, and the Director Town and Country Planning (DTCP), Haryana, has granted an occupation certificate dated 02.02.2022. The construction of the project was completed in three phases, with the last phase completed in June 2021. The project has received OC for all phases.
- III. That the subject unit i.e. flat no. 107, tower C2 (block-7) was originally allotted to Mrs. Priyanka Sangwan. The original allottee executed a flat buyer agreement dated 18.01.2012. However, in March 2012, the said original allottee sold the subject unit to Mr. Raman Bhardwaj vide agreement to sell dated 15.03.2012 and the said unit was endorsed in favor of Mr. Raman Bhardwaj on 16.04.2012. Subsequently, in October 2012, Mr. Raman Bhardwaj sold the subject unit to the complainant vide agreement to sell dated 27.10.2012 and the subject unit was endorsed in favor of the complainant on 03.11.2012.
- IV. That the construction of the tower in question commenced in August 2012 and was completed in April 2021. Further, the respondent applied for OC on 16.04.2021 and received on 02.02.2022.
- V. That the complainant opted construction linked payment plan for payment of the agreed sale consideration and other charges. The respondent from time to time raised demands as per the agreed payment plan, however the complainant failed to adhere the payment plan and severely committed defaults, despite call notices and reminders from the respondent. As on 22.04.2022 the complainant is in arrears of Rs.4,64,340/- towards basic amount, PLC floor, EEC/FFC charges, power backup, electric meter charges and escalation charges, Rs.91,310/- towards Government



Taxes/VAT/CESS and EDC & IDC, Rs.1,52,586/- towards IFMS, Maintenance charges, sinking fund, Common electricity charges and GST approximately as per the offer of possession dated 11.04.2022.

- VI. That the respondent has already offered the possession of the unit to the complainant. However, the complainant has not come forward to take possession of the unit till date.
- VII. That considering the completion of the project and pendency of applications for grant of OC various allottees approached the respondent to permit them to carry out interiors/fit outs in their respective unit and the respondent considering their request agreed to the said requests and many allottees took fit out possession of their respective unit from the respondent. To maintain parity, a similar offer of fit out possession was also made to the complainant vide letter dated 17.03.2021, however the complainant did not avail the said offer.
- VIII. Subsequently, after receipt of OC the complainant were reminded of their obligation to take possession and were called upon to take possession of the subject unit. However, despite number of requests and reminders of the respondent, the complainant till date has not come forward to take possession and do the needful. The respondent has sent various notices/reminders to the complainant including inter-alia, the letters and reminders dated 07.02.2022 and 21.06.2022.
- IX. That despite repeated reminders and offers of possession, the complainant has not taken possession of the unit. The complainant is also in arrears of payments towards the agreed sale consideration and other charges.
- X. That several events, including court orders, disputes with contractors, and government-imposed bans due to environmental concerns and the COVID-19 pandemic, have collectively led to significant delays in construction



activities, amounting to approximately 2½ years. These disruptions include restrictions on groundwater use, labour disputes, bans on construction due to pollution concerns, and the nationwide lockdowns imposed during the pandemic. Despite various extensions granted by Authorities in response to the COVID-19 situation, the construction timeline has been severely impacted. The respondent cannot be held responsible for these delays.

- XI. That the respondent applied for financial support from the SWAMIH Fund, which was sanctioned by the Government of India, affirming the genuineness of the project developer.
- XII. That as per clause 14(a), the obligations of the respondent to complete the construction within the tentative time frame was subject to timely payments of all the installments by the complainant and other allottees of the project. The complainant and various allottees failed to make payments of the installments as per the agreed payment plan. So, the complainant cannot be allowed to seek compensation or interest on the ground that the respondent failed to complete the construction within time given in the said clause. The obligation of the respondent to complete the construction within the time frame as per buyers' agreement was subject dependent upon time payment of the installment by the complainant and other allottees. Many buyers/allottees in the said complex, including the complainant, committed breaches/defaults by not making timely payments of the installments. As such no allottee who has defaulted in making payment of the installments can seek interest or compensation under Section 18 of RERA Act or under any other law.

6. All other averments made in the complainant were denied in toto.

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

E. Jurisdiction of the Authority:

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial Jurisdiction:

9. 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:

10. 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.

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11. 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 relief sought by the complainant.

F.I. Direct the respondent to pay delayed possession charges along with prescribed rate of interest.

12. The complainant is a subsequent allottee. The subject unit was originally allotted to Mrs. Priyanka Sangwan. A buyer's agreement was executed in this regard on 18.01.2012. Vide endorsement sheet dated 16.04.2012, the original allottee transferred all her rights and liabilities in relation to subject unit in the favor of Mr. Raman Bhardwaj. Thereafter, vide endorsement sheet dated 03.11.2012 Mr. Raman Bhardwaj transferred all his rights and liabilities in the name of present allottee i.e. Mr. Krishan Gopal Gupta. 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

13. Herein, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec 18(1) proviso reads as under.

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"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."

14. Clause 14(a) of buyer's agreement provides for handing over of possession and is reproduced below:

"Clause 14(a)

The construction of the flat is likely to be completed within a period of thirty six months (36) of commencement of construction of the particular tower/block in which the flat is located with a grace period of 6 months or receipts of sanction of building plans/revised plans and all other approvals subject of the building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency /workforce and circumstances beyond the control of company and subject to timely payments by the buyer in the said complex....."

(Emphasis supplied)

15. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.



16. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The flat agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit.
17. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months. The date of construction commencement i.e. 10.03.2012 evident from the customer ledger dated 13.09.2023 issued by the respondent. Therefore, the due date of possession comes out to be 10.09.2015 including grace period of six months being unqualified and unconditional.
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. Rule 15 has been reproduced as under:

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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, 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., 22.02.2024 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(z) 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*

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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 complainant shall be charged at the prescribed rate i.e., 10.85 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
23. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 14(a) of the buyer's agreement executed between the parties on 18.01.2012, the possession of the said unit was to be delivered within a period 36 months from the date commencement of construction i.e. 10.03.2012 and it is further provided in agreement that promoter shall be entitled for a grace period of six months. As far as grace period is concerned, the same is allowed being unconditional and unqualified. Therefore, the due date of handing over of possession comes out to be 10.09.2015. In the present complaint the complainant was offered possession by the respondent on 22.04.2022 after obtaining occupation certificate dated 02.02.2022 from the competent authority. The authority is of view that there is a delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 18.01.2012 executed between the parties.
24. The question at hand concerns the duration for which allottees are entitled for delay period interest. Validity of the offer of possession is crucial to determine the liability of the promoter for delayed possession. A valid offer of possession must include the following components as held in ***Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021:***

- i. Possession must be offered after obtaining occupation certificate;
- ii. The subject unit should be in a habitable condition;
- iii. The possession should not be accompanied by unreasonable additional demands.

25. It's noteworthy that the builder initially offered possession on 17.03.2021 before obtaining the occupation certificate i.e.02.02.2022, which failed to meet the criteria of a valid offer of possession. Thus, it cannot be considered as valid. However, the respondent offered possession on 22.04.2022 after obtaining the occupation certificate, which fulfils the criteria of a valid offer of possession. Therefore, the offer of possession dated 22.04.2022, would be considered as valid offer of possession.

26. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 02.02.2022. The respondent offered the possession of the unit in question to the complainant only on 22.04.2022, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant 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 till the expiry of 2 months from the date of offer of possession (22.04.2022) which comes out to be 22.06.2022.

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27. 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 complainant are entitled to delay possession charges at prescribed rate of the interest @ 10.85 % p.a. w.e.f. 10.09.2015 till expiry of 2 months from the date of offer of possession (22.04.2022) i.e., up to 22.06.2022 as per provisions of section 18(1) of the Act read with rule 15 of the rule.

H. Directions of the authority

28. 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. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e., 10.85% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 10.09.2015 till expiry of 2 months from the date of offer of possession (22.04.2022) i.e., up to 22.06.2022 only. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 30 days. The respondent is directed to handover the physical possession of the unit



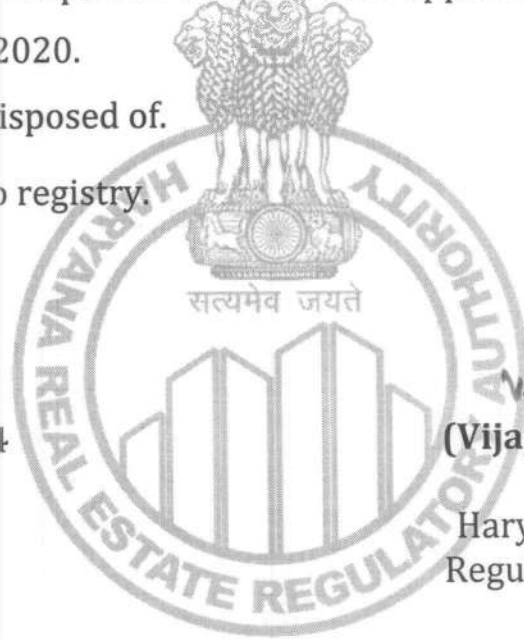
within 30 days to the complainant/allottee along with execution of conveyance deed within next 30 days after payment of stamp duty charges by the complainant.

iv. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/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 on 14.12.2020.

29. Complaint stands disposed of.

30. File be consigned to registry.

Dated: 22.02.2024



(Signature)
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM