

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

Complaint no. : 4693 of 2023
Date of filing : 11.10.2023
First date of hearing: 25.01.2024
Order pronounced on: 25.07.2024

1. Gaurav Sarin
2. Tanika Nangia

Both R/o:- H. No. 7, Sector-46, Near Manav Rachna School,
Gurugram-122001.

Complainants

Versus

M/s Prompt Engineering Private Limited
Registered Office at: GF-1, Vipul Plaza, Village Haiderpur
Viran, Sector-54, Gurugram-122002, Haryana.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Sukhbir Yadav (Advocate)

Complainants

Ms. Shriya Takkar (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over 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	"M3M Corner Walk", Sector-74, Gurugram, Haryana.
2.	Project area	43294.32 Sq. Mtrs.
3.	Nature of Project	Commercial Colony
4.	DTCP license no. and validity status	121 of 2008 dated 14.06.2008 Valid upto 13.06.2023
5.	Name of Licensee	M/s Prompt Engineering Private Limited
6.	Rera registered/ not registered and validity status	Registered Vide no. 17 of 2018 dated 24.01.2018 Valid upto 31.03.2025.
7.	Unit no.	R2-LG 025 on Lower ground in block 2 (As per annexure P3 on page 31 of complaint)
8.	Unit admeasuring area	875.58 sq. ft. of super area (As per annexure P3 on page 31 of complaint)
9.	Allotment letter	23.06.2018 (As per annexure P3 on page 31 of complaint)
10.	Date of builder buyer agreement	08.10.2018 (As per annexure P4 on page 40 of complaint)
11.	Possession clause	7. Possession of the unit: - 7.1 Schedule for possession of the said unit: - <i>Schedule for possession of the Unit: The promoter agrees and understands that timely delivery of possession of the unit along with the car parking space(s), if any, to the Allottee and the Common Areas to the Association of Allottees or the Competent Authority, as the case may be, as provided under the Act and Rule 2(1)(f) of the Rules, 2017, is the essence of the Agreement.</i>
12.	Due date of possession	31.03.2025 <i>(As per mentioned in Registration certificate and as per definition of "commitment period" as mentioned in BBA dated 08.10.2018)</i>

13.	Payment plan	Time linked payment plan (As per page no. 33 of complaint)
14.	Total sale consideration	Rs.1,87,20,603/- (As per annexure P-4 on page no. 39 of complaint)
15.	Total amount paid by the complainant	Rs.1,88,99,444/- (As per SOA dated 14.03.2022 at page no. 112 of complaint)
16.	Occupation certificate	31.08.2021 (As per annexure R-16 on page no. 152-154 of reply)
17.	Offer of possession	09.09.2021 (As per annexure R-17 on page no. 158-158 of reply)
18.	Pre cancellation notice	26.10.2018 (As per annexure R-8 on page no. 131 of reply)
19.	Demand letter	01.06.2021 and 21.06.2021

B. Facts of the complaint:

3. The complainants have made the following submissions: -

1. That in April 2018, the complainants i.e., Gaurav Sarin and Tanika Nangia being relied on representation & assurances of the respondent booked a commercial unit bearing No. R2 LG 025 on the lower ground floor admeasuring 875.58 sq. ft. super area in the project "M3M Corner Walk" marketed and developed by the respondent under Group Housing Scheme and the complainants have purchased the said unit by opting construction link payment plan for a total sale consideration of Rs.1,87,20,603/- including basic sales price, covered parking charges, EDC/IDC, PLC, and membership charges, etc by submitting an advance registration form no. 00243 and also, made a payment of Rs.11,00,000/- on account of the registration amount through cheque no. 452967 dated 06.05.2018 in favour of the respondent party and the respondent issued the payment receipt for the said amount on 08.05.2018.

- II. That thereafter, the complainants made a payment on 21.05.2018 as per the payment plan of Rs.5,00,000/- through cheque having no. 452968 dated 21.05.2018 drawn on HSBC Bank and the respondent acknowledged the said payment and issued the payment receipt on 23.05.2018.
- III. That on 23.06.2018, the respondent sent an allotment letter cum demand letter in the name of the complainants in respect to the confirmation allotment of commercial unit no. R2 LG 025 situated in the project of the respondent i.e., M3M Corner Walk, sector-74, Gurugram. In addition to this, the respondent raised a demand of Rs.21,44,121/- in the said allotment cum demand letter.
- IV. Thereafter, on 08.10.2018, pre-printed, unilateral, ex-facie, and arbitrary builder/flat buyer's agreement was executed inter-se the respondent and the complainants (hereinafter called "BBA/FBA"). According to the possession clause of the buyer's agreement, the respondent has to give possession of the commercial unit purchased by the complainants in "M3M Corner Walk" as per the para iv of the project registration certificate of the respondent's project according to section 17 of the Act. It is pertinent to mention here that the respondent shared a copy of occupancy certificate dated 31.08.2021, hence the due date of possession was 31.11.2021.
- V. That the complainants kept on paying all the demands as and when raised by the respondent and made all the payments timely in accordance with the payment plan opted by the complainants as well.
- VI. That on 09.09.2021, the respondent issued an offer of possession in the name of the complainants, and in the said offer of possession, the respondent asked to remit Rs.31,42,878/-. That the respondent kept raising the demands and the same were being paid by the complainants,

however, the demand raised in the said offer of possession is not acceptable in any manner as the respondent party has levied various illegal, unacceptable and unreasonable charges under the head of FTTH, labour cess, maintenance charges and interest charges, etc. That the respondent offered possession without obtaining the occupancy certificate for full project (only part OC was obtained and construction was going on the upper floors, therefore, the complainant can't use the unit) from the competent authority. It is further highly pertinent to mention here the unit was not in a fit state of occupation. It is pertinent to mention here that in the said offer of possession, the respondent asked for the execution of Indemnity cum undertaking which is against the rights of allottees. It is further pertinent to mention here that the contents of said Indemnity cum undertaking are arbitrary and one-sided. Furthermore, the respondent has sent an invoice for maintenance issued by "M-Worth Facility Services Private Limited" in the name of the complainants, which is also not justifiable. It is crucial to submit here that the respondent has sent an offer of possession which is not valid and a letter full of arbitrary and unreasonable conditions that are not meant to be agreed on. It is further pertinent to mention here that said offer of possession is illegal without OC of the unit, moreover, the respondent did not give GST input credit and justification for interest demand. It is pertinent to mention here that on asking the respondent removed the interest from the demand.

- VII. That after receipt of the offer of possession, the complainants made all the payments under protest to safeguard their legal rights. After making all the payment the complainants asked for the physical possession of the unit, but the respondent asked for the execution of indemnity-cum-undertaking in favour the respondent. Therefore, the complainants

refused to execute the Indemnity-cum-undertaking and the respondent refused to hand over physical possession of the unit. It is further pertinent to mention here that the language of said Indemnity bound is ex-facio and one-sided.

- VIII. That on 14.03.2022, the respondent issued the statement of account cum customer ledger for the unit of the complainants. It is pertinent to mention here that as per the said SOA/customer ledger, the total sale consideration is Rs.1,88,99,446/- and the complainants have paid Rs.1,88,99,444/- which is 100% of the consideration which means the complainants have paid full consideration against the commercial unit booked and allotted to them. It is pertinent to mention here that the complainant paid Rs.1,42,580/- as maintenance charges under protest.
- IX. That it is highly germane to mention here that the due date of delivery of the possession was 31.11.2021 and the respondent failed to hand over the possession of the complainants' unit by then.
- X. That, since 2021, the complainants have been contacting the respondent telephonically, paying visits to the sales office of the respondent, and asking for possession of the unit but all went in vain. Despite several telephonic conversations and requests made by the complainants, the respondent failed to give justification for the grievances raised by the complainants. It is pertinent to mention here that after paying a huge sum of money, the complainants neither got possession of their unit nor any delayed possession charges from the respondent.
- XI. That since August 2021, the complainant (Gaurav Sarin) has been following up with builder/respondent for the possession of the commercial unit allotted to them as the complainants have made the payment in full against the said unit back in 2021. It is pertinent to

mention here that the complainant sent various emails to the respondent asking about the possession of their unit, however, in revert, the respondent kept on asking to sign the indemnity bond for taking the possession, which is a completely illegal demand of the respondent. It is highly pertinent to mention here that the respondent in its email dated 13.04.2023, asked to pay Rs.7,15,951/- on account of holding charges and the same shall keep increasing if the complainants do not take possession in accordance to the arbitrary terms and conditions being imposed by the respondent. It is further stated that the complainants have raised their grievances several times pertaining to the structural defects and in respect to the overhead construction being carried out over the commercial unit of the complainants, however, no response or justification has ever been received by the complainants. It is also very important to note here that this adamant attitude of the respondent has caused a huge rental loss as well as mental agony to the complainants.

- XII. That the unit was purchased under the interest subvention plan and as per said plan the respondent has to pay interest on the loan amount till the offer of possession of the unit. It is pertinent to mention here that the offer of possession dated 09.09.2021 was not a valid offer of possession, there the respondent is duty-bound to pay the interest till a valid offer of possession/actual handover of the unit.
- XIII. That it is necessary to take this fact into consideration that the respondent is being very cunning as on the one hand, the respondent itself is not giving possession in the shield of the indemnity bond and lingering on the same and on the other hand blaming the complainants that they are not taking the possession of their unit.

- XIV. That the main grievance of the complainants in the present complaint is that despite the complainants having paid 100% of the actual cost of the unit, the respondent party has failed to deliver the possession of the complainants' unit.
- XV. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such, they are liable to be punished and compensate the complainants.
- XVI. That the cause of action for the present complaint arose in October 2018, when the respondent got the complainants to sign the BBA containing arbitrary terms. The cause of action again arose in September 2021, when the respondent party issued the illegal offer of possession and asked the complainant to sign the indemnity bond for taking possession and the cause of action again arose on various occasions, including on a) August 2022; b) September 2022; c) December 2022 and d) April 2023; and on many times till date, when the protests were lodged with the respondents about the unreasonable demands being raised in the possession letter. The cause of action is alive and continuing and will continue to subsist till such time as this Hon'ble Authority restrains the respondent by an order of injunction and/or passes the necessary orders.
- XVII. That the complainants being aggrieved persons filing the present complaint under section 31 with the Authority for violation/contravention of provisions of this Act as mentioned in the preceding paragraph.
- XVIII. That as per section 18 of the RERA Act. 2016, the promoter is liable to pay the interest or return of the amount and to pay compensation to the allottees of a unit, building, or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.

- XIX. That the complainants do not want to withdraw from the project. The promoter has not fulfilled his obligation therefore as per obligations on the promoter under section 18(1) proviso, the promoter is obligated to pay the interest at the prescribed rate for every month of delay till the handing over of the possession.
- XX. That the present complaint is not for seeking compensation, without prejudice, complainants reserve the right to file a complaint to Adjudicating Officer for compensation.

C. Reliefs sought by the complainant

4. The complainants have sought the following relief:
- i. To get the physical possession of the fully developed/constructed commercial unit with all amenities without any pre-conditions.
 - ii. To get the delayed possession interest at the prescribed rate from the due date of possession i.e., 31.11.2021 till the actual date of possession (complete in all respects with all amenities).
 - iii. To get the reimbursement of interest paid by the allottee/complainant on the loan amount from 09.09.2021 till a valid offer of possession/actual handover of the unit. Justification – the offer of possession 09.09.2021 is not a valid offer of possession and the complainants paying interest @ 11% on the loan amount.
 - iv. To get an order in their favor by restraining the respondent from all the unjustified and illegal charges which have been charged in the offer of possession 31.11.2021 and direct the respondent to refund the said amount of FTTH, Labour Cess, along with interest at the prescribed rate.
 - v. To get an order in their favour by directing the respondent to give GST input credit.
 - vi. To get an order in their favor by restraining the respondent from charging holding charges and maintenance charges, and directing the respondent to adjust Rs.1,42,580/- against future maintenance charges (after handing over the possession of the unit).
 - vii. To get an order in their favor by restraining the respondent from charging various illegal charges in its offer of possession.
 - viii. To get an order in their favor by restraining the respondent from asking to sign the Indemnity Bond.
 - ix. The complainants are also entitled to any other relief to which they are found entitled by this Hon'ble Authority.

5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds:
- I. That the respondent i.e., M/s. Prompt Engineering Pvt. Ltd. is the owner of freehold land admeasuring 43294.32 sq. meters situated in Sector 74, Gurugram, Haryana and has developed a commercial project/ mixed use land and has carved a niche for itself in the real estate sector.
 - II. The project 'M3M Corner Walk' is a commercial project being developed in a planned and phased manner with efficient retail, including multiplex, food and beverage outlets, food courts, fine dining restaurants, high end condominiums and office space located in Sector-74, Gurugram. The registration under RERA Act, 2016 read with H-RERA Rules and HARERA has been granted in the name of respondent herein (registration number 17 of 2018 dated 24.01.2018).
 - III. That without prejudice to the aforementioned contentions it is stated that the complainants have approached the Hon'ble Authority with unclean hands and have tried to mislead the Hon'ble Authority by making incorrect and false averments and stating untrue and/or incomplete facts and, as such, is guilty of *suppressio very suggestion falsi*. The complainants have suppressed and/or mis-stated the facts and, as such, the complaint apart from being wholly misconceived is rather the abuse of the process of law. On this short ground alone, the complaint is liable to be dismissed.
 - IV. That the complainants have neither any cause of action nor any locus standi to maintain the present complaint against the respondent, especially when the complainants actually defaulted in making the

payment and failed to comply with possession related formalities and are now seeking the complete modification of the terms and conditions of the understanding between the parties.

- V. That the complaint filed by the complainants is baseless, vexatious and is not tenable in the eyes of law therefore the complaint deserves to be dismissed at the very threshold.
- VI. At the very outset, the respondent wants to bring to the kind knowledge of this Hon'ble Authority that the complainants have not approached this Hon'ble Regulatory Authority with clean hands and is guilty of suppression of material facts absolutely relevant for just and proper adjudication of this complaint. The complainant no.1 after conducting his own due diligence applied for booking of a commercial unit in the project "M3M Corner Walk" which is a commercial project being undertaken by the respondent vide Application Form and paid an amount of Rs.11,00,000/- towards the part booking amount.
- VII. In due consideration of the part booking amount paid by the complainant no.1 and his commitments to comply with the terms of the booking/allotment and make timely payments of demands, the respondent allotted a unit bearing no. R2 LG 025 in "M3M Corner Walk", a commercial project of the respondent vide allotment letter dated 23.06.2018.
- VIII. That in furtherance of the Allotment, the respondent had sent the buyer's agreement and other related documents vide cover letter dated 04.07.2018 for due execution at the complainant's end.
- IX. Thereafter the complainant no.1 requested the respondent for name addition of his wife, Ms. Tanika Nangia and the respondent being a customer-oriented company acceded to the request of the complainant

no.1 and added the name of complainant no.2 and issued a revised allotment letter. The cost of the unit for carpet area admeasuring 443.52 sq. ft. was Rs.1,87,20,603/- plus other charges. That the complainants had opted for a specific payment plan on their own free will and volition. That vide the said allotment letter the complainants were requested to clear their dues towards the demand to the tune of Rs.21,44,121/-.

- X. That the respondent had sent the buyer's agreement to the complainants for due execution at their end and the buyer's agreement was executed between the parties on 08.10.2018. That the buyer's agreement duly covers all the liabilities and rights of both the parties.
- XI. Thereafter, the respondent raised a demand vide demand letter dated 09.10.2018 due within 60 days of booking for an amount of Rs.49,52,211/- as per the payment plan specifically opted by the complainants. That the said demand letter included the previous outstanding dues of Rs.21,44,121/-. That the complainants failed to pay the outstanding dues raised vide the allotment cum demand letter and therefore the respondent issued a reminder vide reminder letter dated 10.10.2018 requesting the complainants to make the payment of outstanding dues amounting to Rs.21,44,121/-.
- XII. That the complainants in violation of their legal obligations miserably failed to remit any amount towards the dues communicated, therefore the respondent left with no other alternative, issued pre-cancellation notice dated 26.10.2018.
- XIII. Thereafter, the tripartite agreement was executed between the respondent, Piramal Capital & Housing Finance Limited and the complainants on 20.12.2018. Accordingly, the respondent issued permission to mortgage.

- XIV. That the complainants failed to clear the dues raised vide demand letter and therefore the respondent issued a reminder vide reminder letter dated 19.07.2019 requesting the complainants to come forward and clear their pending dues amounting to Rs.18,72,060/-.
- XV. Thereafter the respondent raised a demand vide demand note dated 03.10.2019 for an amount of Rs.32,76,106/- which includes previous pending dues on the achievement of the relevant construction milestone.
- XVI. That respondent completed the construction of the project way before the agreed timeline and applied for OC on 28.05.2021.
- XVII. That the respondent further raised a demand vide demand letter dated 01.06.2021 on the "Application of OC" to be payable on or before 20.06.2021. That all the demands were raised in accordance with the payment plan opted by the complainants and on the achievement of relevant construction milestone.
- XVIII. Since, the complainants failed to make timely payment of dues, therefore the respondent issued a reminder vide reminder letter dated 21.06.2021 calling upon the complainants to come forward and clear their pending outstanding dues amounting to Rs.1,21,186/-.
- XIX. That the respondent received the OC from the competent authority on 31.08.2021 after due verification and inspection that the project is habitable.
- XX. That the unit was ready and the respondent herein vide letter dated 09.09.2021 offered possession to the complainants and requested the complainants to remit the outstanding amount towards the remaining basic sale price, service tax, cess, stamp duty charges etc. That all the demands were raised in accordance with the terms of the buyer's agreement.

- XXI. That despite several requests and follow ups, the complainants failed to come forward to take over the possession and clear their dues, therefore the respondent was constrained issued a pre-cancellation notice dated 09.10.2021.
- XXII. Thereafter the complainants after assessing the state of development cleared all their pending dues on their own free will. However, for the reasons best known to the complainants, they are not coming forward to take possession of the unit which is complete and ready.
- XXIII. Since the complainants were not coming forward to take possession of the unit therefore, the respondent vide emails dated 22.08.2022, 18.09.2022, 13.04.2023, 07.06.2023, 01.08.2023, 04.10.2023 requesting the complainants to come forward and take the possession of the said unit. That the complainants were well aware of their obligation to take possession of the unit in accordance with Sec 19(10) of RERA Act, 2016.
- XXIV. Thus, the complainants were in default of their contractual obligations as per the RERA Act,2016 and the buyer's agreement duly executed between the parties.
- XXV. That the complainants in default of their contractual obligations, pursuant to the issuance of the pre-cancellation notice cleared their dues but failed to complete the possession related formalities prescribed by the respondent to take over the possession of the unit despite repeated reminders. Since, the complainants are not coming forward to take over the possession of the unit, they are liable to pay holding charges and maintenance charges as per the terms of the buyer's agreement.
- XXVI. The complainants are in default of their contractual obligations and are raising these frivolous issues in order to escape their liability cast upon them by the virtue of the terms of agreement and unjustly enrich

themselves. Therefore, the complainants are not entitled to any relief whatsoever.

- XXVII. That the due date of possession as per the terms of the buyer's agreement was 31.03.2025 or as may be further revised/approved by the authorities.
- XXVIII. That the respondent despite adverse circumstances like NGT orders, Covid-19 pandemic completed the construction of the commercial component and applied for the grant of occupation certificate on 28.05.2021. The occupation certificate was granted by the competent authorities on 31.08.2021 after due verification and inspection. The respondent offered the notice for offer of possession vide cover letter dated 09.09.2021 to the complainants for the commercial unit. that despite various opportunities/reminders, the complainants did not come forward to comply with possession related formalities as a result of which the respondent was constrained to issue pre-cancellation notice dated 09.10.2021. Thus, it absolutely clear that there is no delay in offering in offering possession of the unit to the complainants. Thus, no case is made out under Section 18 of the RERA Act, 2016.
- XXIX. That the parties are bound by the terms and conditions mentioned in the buyer's agreement dated 08.10.2018. The said agreement was duly acknowledged by the complainants after properly understanding each and every clause contained in the agreement. The complainants were neither forced nor influenced by the respondent to sign the said agreement. It was the complainants who after understanding the clauses signed the said buyer's agreement in complete senses and free will.
- XXX. That as per clause 5 of the buyer's agreement entered into between the parties, time was the essence of the agreement and the complainants were

bound to make timely payments of the instalments due as per the payment plan opted by the complainants.

- XXXI. That it is trite law that the terms of the agreement are binding between the parties. The Hon'ble Supreme Court in the case of "**Bharti Knitting Co. vs. DHL Worldwide Courier (1996) 4 SCC 704**" observed that a person who signs a document containing contractual terms is normally bound by them even though she has not read them, and even though she is ignorant of their precise legal effect. It is seen that when a person signs a document which contains certain contractual terms, then normally parties are bound by such contract; it is for the party to establish exception in a suit. When a party to the contract disputes the binding nature of the signed document, it is for him or her to prove the terms in the contract or circumstances in which he or she came to sign the documents.
- XXXII. That the Hon'ble Supreme Court in the case of "**Bihar State Electricity Board, Patna and Ors. Vs. Green Rubber Industries and Ors, AIR (1990) SC 699**" held that the contract, which frequently contains many conditions, is presented for acceptance and is not open to discussion. It is settled law that a person who signs a document which contains contractual terms is normally bound by them even though he has not read them, even though he is ignorant of the precise legal effect.
- XXXIII. That the Complainants have approached the Hon'ble Authority with unclean hands, has suppressed and concealed material and vital facts which have a direct bearing on the very maintainability of the purported Complaint and if there had been disclosure of these material facts, the question of entertaining the purported Complaint would not have arisen. It is settled law as held by the Hon'ble Supreme Court in '**S.P. Chengalvaraya Naidu v. Jagannath 1994(1) SCC (1)**' that non-

disclosure of material facts and documents amounts to a fraud on not only the Opposite Parties but also on the Court. Reference may also be made to the decisions of the Hon'ble Supreme Court in '**Dilip Singh v. State of UP 2010-2-SCC-114** and **Amar Singh v. Union of India 2011-7-SCC-69**' which is also been followed by the Hon'ble National Consumer Disputes Redressal Commission in the case of '**Tata Motors v. Baba Huzoor Maharaj being RP No. 2562 of 2012 decided on 25.09.2013**'.

- XXXIV. That the complainants have not approached this Hon'ble Authority with clean hands. It is submitted that the complainants are attempting to raise non-issues in order to acquire benefits for which the complainants are not entitled in the least.
- XXXV. That the complainants have wilfully agreed to the terms and conditions of the buyer's agreement and now at this belated stage are attempting to wriggle out of their contractual obligations by filing the instant complaint before the Hon'ble Authority.
- XXXVI. In the present case, the complainants have suppressed many material facts, which are extremely relevant and crucial for the proper and just adjudication of the present dispute. For the reason the complainants have with mala-fide intent, suppressed material facts from this Hon'ble Authority, which tantamount to playing fraud upon this Hon'ble Authority, that the complainants do not deserve any relief and the present complaint merits dismissal on this ground itself.
- XXXVII. That various reminder letters and pre-cancellation notices were issued by the respondent on account of payment defaults and non-compliance of obligations of the complainants that have been suppressed by the complainants. That this act of the complainants shows that they are trying to escape the liability cast upon them by the virtue of the buyer's

agreement and are raising false issues against the respondent to unjustly enrich themselves at the cost of the respondent. It is pertinent to mention here that the reminders and pre-cancellation notices dated 07.08.2018, 10.10.2018, 26.10.2018, 19.07.2019, 21.06.2019 and 09.10.2021 issued by the respondent have been suppressed by the complainants and the same are annexed with this reply.

- XXXVIII. In view of aforesaid facts, That the captioned complaint is frivolous, vague and vexatious in nature. The captioned complaint has been made with the intent to injure and damage the interest and reputation of the respondent and the complex and therefore, the instant Complaint is liable to be dismissed in limine.
- XXXIX. That the complainants have failed to complete the possession related formalities. That various reminders were issued to and follow ups were made with the complainants for complying with their obligations under the buyer's agreement. Even after repeated demands the complainants were not ready to come forward and comply with their obligations to take over the possession. Hence, complainants are not entitled to get any reliefs from the Hon'ble Authority.
- XL. That the complainants are defaulters as despite issuance of various emails and reminders requesting the complainants to take the possession of the unit, however, they failed to do so. The complainants were in default of their obligations under Section 19(10) of RERA Act, 2016 and the said clause is reproduced hereinbelow for ready reference:
- XLI. Hence, the complainants are not entitled to get any relief from this Hon'ble Regulatory Authority. Since the complainants are not coming forward to take over the possession of the unit, they are liable to pay holding charges and maintenance charges as per the terms of the buyer's agreement.

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 based on these undisputed documents made by both the parties.

E. Written Submissions by both the parties

8. The counsel for the complainant has filed the written submission on 01.07.2024 and the counsel for the respondent has filed the written submission on 04.07.2024 and the same are taken on record. No additional facts apart from the complaint or reply have been stated in the written submissions.

F. Jurisdiction of the authority

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

F.1 Territorial jurisdiction

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.

F. II Subject matter jurisdiction

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the

conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

10. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

G. Findings regarding relief sought by the complainants.

G.I Direct the respondent to handover the physical possession of the fully developed commercial unit with all amenities without any pre-conditions.

G.II Direct the respondent to pay delay possession interest at the prescribed rate from the due date of possession i.e., 31.11.2021 till the actual date of possession.

G.III Restrain the respondent from charging various illegal charges in its offer of possession.

G.IV Any other relief as may be deemed fit in the facts and circumstances.

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

12. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

13. On consideration of the documents available on records and submissions made by both the parties, the authority observes that the complainants were allotted a unit bearing no. R2-LG 025 on lower ground floor, block-2 admeasuring 875.58 sq. ft. super area in project namely "M3M Corner Walk" developed by M/s Prompt Engineering Private Limited was allotted to them vide allotment letter dated 23.06.2018. Thereafter, a buyer's agreement was executed between the parties on 08.10.2018 with respect to the allotted unit for total sale consideration of Rs.1,87,20,603/- and paid an amount of Rs.1,88,99,444/- till date. However, as per the buyer's agreement the respondent-promoter has to complete the construction of the project, as notified by the promoter at the time of registration of the project under the Act, 2016 and the same shall be completed till March, 2025. Therefore, the due date to offer the possession of the unit was committed to the complainants-allottees is March, 2025 and the same is clearly mentioned in definition clause (m) at page 8 of buyer's agreement and the same is reproduced herein below:

"Commitment period shall means March, 2025 notified by the promoter to the Authority at the time of registration of the project under the Act, for completion of the project, or as may be further revised/approved by the authorities."

14. Thereafter, the respondent-developer has obtained occupancy certificate of the unit of the complainants from the competent authority on 31.08.2021 and the respondent has offered the possession to the complainants-allottees on 09.09.2021.
15. In view of the above, the authority observes that the respondent has obtained the part occupancy certificate of the project in which the unit of the complainants is situated, before the due date of possession as agreed between both the parties at the time of execution of buyer's agreement. Thus, there is no delay in offering the possession of the unit on account of respondent-promoter.

Hence, the relief of the complainants with regard to the delay possession charge is hereby declined being devoid of merits.

G.V Direct the respondent to reimbursement of interest paid by the complainant on the loan amount from 09.09.2021 till a valid offer of possession/actual handover of the unit.

16. Thereafter, a tripartite agreement under subvention scheme was executed between complainants, promoter and Piramal Capital & Housing Finance Limited on 18.12.2018, and a permission to mortgage letter was to Piramal Capital & Housing Finance Limited on 20.12.2018. Thereafter, on 29.12.2018 the respondent has issued a letter to the complainant, as per the said letter the respondent has agreed to pay the pre-EMI's on behalf of complainants-allottees till offer of possession or till disbursement of the entire sanctioned amounts. the relevant para of the letter dated 29.12.2018 is reproduced herein below:

"as per the arrangement and understanding regard the loan facility extended to you for purchase of the captioned unit and for which purposes all necessary documentation has been executed by you, certain loan amounts shall be disbursed on your behalf at the time of offer of possession and that the obligation to serve/pay the EMI shall commence only on offer of possession or on disbursement of the entire sanctioned loan amounts."

17. Accordingly, as per the para mentioned above, the respondent has to pay the pre-EMI's on behalf of complainants-allottees till offer of possession or till disbursement of the entire sanctioned amounts, However, the respondent has already obtained part occupation certificate of the project in which unit of complainant is located on 31.08.2021 and offered the possession of the unit on 09.09.2021. Moreover, it is an admitted fact that the respondent has already paid pre-EMI's on behalf of complainants till offer of possession dated 09.09.2021 as agreed by the respondent in terms of the letter dated 29.12.2018 and the respondent has fulfilled its obligation by making payment of pre-EMI's till offer of possession. Hence, the said relief sought by the complainants-allottees is hereby declined being devoid of merits.

G.VI Restrain the respondent from charging unjustified and illegal charges which have been charged in the offer of possession and refund of the already paid amount on account of FTTH and labour cess along with interest at the prescribed rate.

18. That the respondent in its offer of possession letter dated 09.09.2021 has claimed reimbursement of FTTH and labour cess. However, the respondent has failed to provide the clarification on what account the respondent has charged an amount on reimbursement of FTTH.
19. Moreover, the Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.9.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled **Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited** wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be separately charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainants is completely arbitrary and the complainants cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

G.VII Direct the respondent to give GST input credit.

20. The respondent is directed to charge the GST as per rules and regulations and for the input tax credit, the attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e.

GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/ Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below:

"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."

21. The intention of the legislature was amply clear that the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017. As per the above said provisions of the Act, it is mandatory for the respondent to pass on the benefits of 'Input Tax Credit' by way of commensurate reduction in price of the flat/unit. Accordingly, respondent should reduce the price of the unit/consideration to be realized from the buyer of the flats commensurate with the benefit of ITC received by him. The promoter shall submit the benefit given to the allottee as per section 171 of the HGST Act, 2017.
22. The builder has to pass the benefit of input tax credit to the buyer. In the event, the respondent-promoter has not passed the benefit of ITC to the buyers of the unit. The allottee shall be at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter.
G.VIII Restrain the respondent from charging holding charges and maintenance charges and direct the respondent to adjust Rs.1,42,580/- against future maintenance charges (after handing over the possession of the unit).
23. The respondent is also 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 *Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.*

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Moreover, the issue pertaining to restrain the respondent to claim and refund of maintenance charges. The respondent has obtained the Part occupancy certificate on 31.08.2021 and issued offer for possession on 09.09.2021. As per clause 11.1 of buyer's agreement the complainants-allottees are obligated to pay maintenance charges after issuance of offer of possession and also under section 19(6) of the Act the complainants-allottees are obligated to pay maintenance charges and the same is reproduced herein below:

"Section 19. (6): Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any."

In view of the above, the authority deems fit 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 (1) year from the allottees.

G.IX Retrain the respondent from asking to sign the indemnity bond.

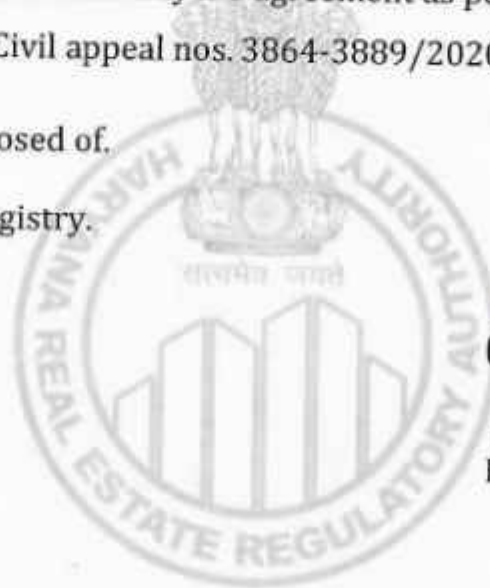
24. The Respondent is directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in complaint bearing no. **4031 of 2019 titled as Varun Gupta V. Emaar MGF Land Ltd.**

H. Directions of the authority:

25. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the act of 2016:
- I. The complainants are not entitled to the relief of delay possession charges as they have not suffered any delay in handing over of possession.

- II. The respondent is directed to handover the physical possession of the unit to the complainants within thirty days of this order, as per section 17(2) of the Act and the complainants are obligated to take physical possession of the unit as per section 19(10) of the Act of 2016.
- III. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is not entitled to charge holding charges from the complainant/ allottees at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 on 14.12.2020.
26. Complaint stands disposed of.
27. File be consigned to registry.

Dated: 25.07.2024




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

HARERA
GURUGRAM