

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

**Date of decision: 13.08.2024**

NAME OF THE BUILDER		Aster Infrahome Private Limited.	
PROJECT NAME		Green Court, Sector- 90, Gurugram, Haryana	
S. No.	Case No.	Case title	Appearance
1.	CR/1607/2022	Lalit Kumar Nain Vs. M/s Aster Infrahome Private Limited	Adv. Sunil Kumar Nehra (Complainant) and Adv. Shankar Wig. (Respondent)
2.	CR/6541/2022	Neeraj Yadav Vs. M/s Aster Infrahome Private Limited	Adv. Rajiv Kumar Khare (Complainant) and Adv. Shankar Wig. (Respondent)
3.	CR/7418/2022	Ashwani Kumar Vs. M/s Aster Infrahome Private Limited	Adv. Sukhbir Yadav (Complainant) and Adv. Shankar Wig. (Respondent)
4.	CR/7421/2022	Jagbir Singh Vs. M/s Aster Infrahome Private Limited	Adv. Sukhbir Yadav (Complainant) and Adv. Shankar Wig. (Respondent)
5.	CR/47/2023	Pawan Kumar Vs. M/s Aster Infrahome Private Limited	Adv. Sukhbir Yadav (Complainant) and Adv. Shankar Wig. (Respondent)
6.	CR/2416/2023	Kamal Bansal Vs. M/s Aster Infrahome Private Limited	Adv. Surender Kumar Yadav (Complainant) and Adv. Shankar Wig. (Respondent)
7.	CR/2784/2023	Richa Gandhi	Adv. Jagdeep Kuamr

		Vs. M/s Aster Infrahome Private Limited	(Complainant) and Adv. Shankar Wig. (Respondent)
8.	CR/2785/2023	Amit Gandhi Vs. M/s Aster Infrahome Private Limited	Adv. Jagdeep Kumar (Complainant) and Adv. Shankar Wig. (Respondent)

**CORAM:**

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Sanjeev Kumar Arora

**Chairman****Member****Member****ORDER**

1. This order shall dispose of 8 complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Green Court, Sector- 90, Gurugram, Haryana being developed by the respondent/promoter i.e., M/s Aster Infrahome Private Limited. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question thus seeking refund of the unit along with interest.

3. The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	"Green Court", Sector- 90, Gurugram, Haryana.
<b>Project area</b>	10.125 acres
<b>Nature of the project</b>	Affordable group housing colony
<b>DTCP license no. and other details</b>	i. 61 of 2014 dated 07.07.2014 valid up to 06.07.2019 ii. 62 of 2014 dated 07.07.2014 valid up to 06.07.2019  M/s Aster Infrahome Pvt. Ltd. (For both the licences)
<b>Building plan approval dated</b>	22.10.2014 [As mentioned in the buyer's agreement at page 19A of complaint bearing no. 1607 of 2022]
<b>Environment clearance dated</b>	22.01.2016 (Page no. 38 of the reply of the complaint no. 1607 of 2022)
<b>RERA Registered/ not registered</b>	Registered  137 of 2017 dated 28.08.2017 valid up to 22.01.2020
<b>Extension Certificate no.</b>	09 of 2020 dated 29.06.2020 valid up to 22.01.2021
<b>Occupation certificate</b>	17.11.2022  (Page no. 11 of the additional documents filed by the respondent on 08.09.2023 in complaint no. 1607 of 2022)
<b>Possession clause as per buyer's agreement</b>	8(a). <i>Subject to the force major circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under</i>



	<p>any part hereof, including but not limited to the timely payment of installments of the other charges as per the payment plan, Stamp Duty and registration charges, <b>the Developer proposes to offer possession of the Said Flat to the Allottee within period of 4(four) years from the date of approval of building plans or grant of environment clearance, whichever is later (hereinafter referred to as the "Commencement Date.")</b></p>
<p><b>Possession clause as per Affordable Housing Policy, 2013</b></p>	<p><b>1(IV) of the Affordable Housing Policy, 2013</b> All such projects shall be required to be necessarily completed within <b>4 years from the approval of building plans or grant of environmental clearance, whichever is later.</b> This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licenses shall not be renewed beyond the said 4 years period from the date of commencement of project</p>

S. N o.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	Date of execution of buyer's agreement	Due date of possession	Total sale consideration and Total amount paid by the complainant in (Rs.)	Offer of possession	Relief sought
1.	<p>CR/1607/2022 Lalit Kumar Nain Vs. M/s Aster Infrahome Private Limited <b>DOF:</b> 06.05.2022 <b>RR:</b> 29.08.2022</p>	<p>0903 on 9<sup>th</sup> floor, tower ] 590. sq. ft. (carpet area)  [Page no. 20 of the complaint]</p>	<p>16.02.2016 [Page no. 18 of the complaint]</p>	<p>22.01.2020 [The due date of possession has been calculated as 4 years from the date of obtaining environment clearance (22.01.2016) being later as per</p>	<p><b>TC:</b> 25,22,777/-  <b>AP:</b> 25,14,944/- [As per customer ledger dated 19.09.2020 on page no. 17 of the complaint]</p>	<p>24.11.2022 (Page no. 4 of the additional documents filed by the respondent on 08.09.2023 )</p>	<p>➤ Delayed possession charges along with Possession and others</p>



				clause 1(IV) of the Affordable Housing Policy, 2013]			
2.	CR/6541/2022 Neeraj Yadav Vs. M/s Aster Infrahome Private Limited  <b>DOF:</b> 21.10.2022 <b>RR:</b> 25.04.2023	712, on 07 <sup>th</sup> Floor, Tower - F, 336. sq. ft. (carpet area) (Page no. 16 of the complai nt)	01.06.2016  [Page no. 13 of the complaint]	22.01.2020  [The due date of possession has been calculated as 4 years from the date of obtaining environmen t clearance (22.01.2016 ) being later as per clause 1(IV) of the Affordable Housing Policy, 2013]	<b>TC:</b> 16,32,165/-  <b>AP:</b> 14,52,883/- [Page no. 10 of the application filed by the respondent on 28.08.2023]	24.11.2022  (Page no. 8 of the application filed by the respondent on 28.08.2023)	➤ Delayed possession charges along with Possession
3.	CR/7418/2022 Ashwani Kumar Vs. M/s Aster Infrahome Private Limited  <b>DOF:</b> 29.11.2022 <b>RR:</b> 25.04.2023	0312 on 3 <sup>rd</sup> floor, tower H 336. sq. ft. (carpet area)  [Page no. 45 of the complai nt]	25.06.2019  [Page no. 35 of the complaint]	22.01.2020  [The due date of possession has been calculated as 4 years from the date of obtaining environmen t clearance (22.01.2016 ) being later as per clause 1(IV) of the Affordable Housing	<b>TC:</b> 16,54,990/-  <b>AP:</b> 14,75,840/- [Page no. 12 of the additional documents filed by the respondent on 19.09.2023]	Offer of fit-out 22.06.2022  Registration of the unit 25.07.2023  (Page no. 6 & 10 of the additional documents filed by the respondent on 19.09.2023)	➤ To handover the possession of the unit with all amenities and complete in all aspects, after obtaining OC. ➤ DPC ➤ Restraining the respondent from interest free operational security, EEC, DEMC,

				Policy, 2013]			Labour cess etc.
4.	CR/7421/2022 Jagbir Singh Vs. M/s Aster Infrahome Private Limited <b>DOF:</b> 29.11.2022 <b>RR:</b> 25.04.2023	1005 on 10 <sup>th</sup> floor, tower C  526. sq. ft. (carpet area)  [Page no. 53 of the complai nt]	21.05.2019  [Page no. 42 of the complaint]	22.01.2020  [The due date of possession has been calculated as 4 years from the date of obtaining environmen t clearance (22.01.2016 ) being later as per clause 1(IV) of the Affordable Housing Policy, 2013]	<b>TC:</b> 25,61,178/-  <b>AP:</b> 23,26,858/-  [Page no. 12 of the additional documents filed by the respondent on 19.09.2023]	Offer of fit- out 23.07.2022  Registration of the unit 24.11.2022  (Page no. 6 & 10 of the additional documents filed by the respondent on 19.09.2023)	➤ To handover the possession of the unit with all amenities and complete in all aspects, after obtaining OC. ➤ DPC ➤ Restraining the respondent from interest free operational security, EEC, DEMC, Labour cess etc.
5.	CR/47/2023 Pawan Kumar Vs. M/s Aster Infrahome Private Limited <b>DOF:</b> 03.02.2023 <b>RR:</b> 25.08.2023	0602 on 6 <sup>th</sup> floor, tower ]  590. sq. ft. (carpet area)  [Page no. 27 of the complai nt]	26.05.2016  [Page no. 18 of the complaint]	22.01.2020  [The due date of possession has been calculated as 4 years from the date of obtaining environmen t clearance (22.01.2016 ) being later as per clause 1(IV) of the Affordable Housing Policy, 2013]	<b>TC:</b> 28,01,937/-  <b>AP:</b> 25,14,944/-  [Page no. 9 of the application filed by the respondent on 11.10.2023]	Offer of fit- out 31.07.2022  Registration of the unit 24.11.2022  (Page no. 3 & 7 of the application filed by the respondent on 11.10.2023)	➤ Possession along with Delayed possession charges ➤ Not to charge anything which is not part of the BBA. ➤ Waive off all illegal demands ➤ compensat ion



6.	CR/2416/2023 Kamal Bansal Vs. M/s Aster Infrahome Private Limited  <b>DOF:</b> 06.06.2023 <b>RR:</b> 26.09.2023	0203 on 2 <sup>nd</sup> floor, tower E  320. sq. ft. (carpet area)  [Page no. 28 of the complaint]	01.02.2016  [Page no. 25 of the complaint]	22.01.2020  [The due date of possession has been calculated as 4 years from the date of obtaining environmen t clearance (22.01.2016 ) being later as per clause 1(IV) of the Affordable Housing Policy, 2013]	<b>TC:</b> 15,55,074/-  <b>AP:</b> 13,86,871/-  [Page no 124 of the reply]	Offer of fit- out 22.06.2022  Registration of the unit 24 11.2022  (Page no. 119 & 123 of the reply)	➤ Possession along with Delayed possession charges
7.	CR/2784/2023 Richa Gandhi Vs. M/s Aster Infrahome Private Limited  <b>DOF:</b> 28.06.2023 <b>RR:</b> 25.10.2023	1007 on 10 <sup>th</sup> floor, tower I  590. sq. ft. (carpet area)  [Page no. 40 of the complaint]	03.06.2016  [Page no. 37 of the complaint]	22.01.2020  [The due date of possession has been calculated as 4 years from the date of obtaining environmen t clearance (22.01.2016 ) being later as per clause 1(IV) of the Affordable Housing Policy, 2013]	<b>TC:</b> 28,01,937/-  <b>AP:</b> 25,14,943/-  [Page no 125 of the reply]	Offer of fit- out 31.07.2022  Registration of the unit 24 11.2022  (Page no. 119 & 123 of the reply)	➤ To Delayed possession charges as per clause 5(III)(B). ➤ To Earmark two wheeler parking ➤ To provide architects confirmatio n for increase of 10 sq. ft. of carpet area ➤ To provide physical possession and execute CD ➤ To refund PBC, DEC, labour cess, VAT, IFOS, Administrati ve Charges, One Year
8.	CR/2785/2023 Amit Gandhi Vs.	0702 on 7 <sup>th</sup> floor, tower C  590. sq. ft.	03.06.2016	22.01.2020  [The due date of possession has been	<b>TC:</b> 28,02,451/-	Offer of fit- out 23.07.2022	

M/s Aster Infrahome Private Limited  <b>DOF:</b> 28.06.2023 <b>RR:</b> 25.10.2023	(carpet area)  [Page no. 46 of the complaint]	[Page no. 43 of the complaint]	calculated as 4 years from the date of obtaining environmen t clearance (22.01.2016 ) being later as per clause 1(IV) of the Affordable Housing Policy, 2013]	<b>AP:</b> 25,15,457/-  [Page no 125 of the reply]	Registration of the unit 24.11.2022  (Page no. 119 & 123 of the reply)	operational Charges, GST, to construct as per policy of 2013. compensati on
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**Note:** In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
DPC	Delayed possession charges
TSC	Total sale consideration
AP	Amount paid by the allottee/s
EEC	External Electrification Charges
DEMOC	Dual Electrical Meter Charges
CD	Conveyance deed
PBC	Power Backup Charges
IFOS	Interest Free Operational Security

4. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/1607/2022 titled as Lalit Kumar Nain Vs. M/s Aster Infrahome Private Limited.** are being taken into consideration for determining the rights of the allottee(s).

**A. Project and unit related details**

5. The particulars of the project, the details of 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 in **CR/1607/2022 titled as Lalit Kumar Nain Vs. M/s Aster Infrahome Private Limited.**

S.N.	Particulars	Details
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1.	Name of the project	"Green Court", Village Hayatpur, Sector-90, Gurugram	
2.	Project type	Affordable group housing project	
3.	Project area	10.125 acres	
4.	DTCP license no.	i. 61 of 2014 dated 07.07.2014 valid up to 06.07.2019 ii. 62 of 2014 dated 07.07.2014 valid up to 06.07.2019	
	Name of licensee	M/s Aster Infrahome Pvt. Ltd. (For both the licences)	
5.	RERA Registered/ not registered	Registered 137 of 2017 dated 28.08.2017 valid up to 22.01.2020	
6.	Extension Certificate no.	09 of 2020 dated 29.06.2020 valid up to 22.01.2021	
7.	Unit no.	0903 on 9 <sup>th</sup> floor, tower J [Page no. 20 of the complaint]	
8.	Unit area admeasuring	Carpet area- 590	Balcony area- 100
9.		sq. ft.	sq. ft.
		[Page no. 20 of the complaint]	
10.	Date of allotment	Not provided on record	
11.	Date of flat buyer agreement	16.02.2016 [Page no. 18 of the complaint]	
12.	Possession clause	<b>Clause 8(a)</b> <i>Subject to the force major circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof, including but not limited to the timely payment of installments of the other</i>	



		<i>charges as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within period of 4(four) years from the date of approval of building plans or grant of environment clearance, whichever is later (hereinafter referred to as the "Commencement Date.")</i> (Page no. 25 of the complaint)
13.	Building plan approvals	22.10.2014 [As mentioned in the buyer's agreement at page 19A of complaint]
14.	Environment clearance dated	22.01.2016 [Page no. 38 of the reply]
15.	Due date of possession	22.01.2020 [Note: - the due date of possession can be calculated by the 4 years from approval of building plans (22.10.2014) or from the date of environment clearance (22.01.2016) whichever is later.]
16.	Payment plan	Time linked payment plan (Page no. 37 of the complaint)
17.	Sale Consideration	Rs.25,22,777/- [As per customer ledger dated 19.09.2020 on page no. 17 of the complaint]
18.	Amount paid by the complaint	Rs.25,14,944/- [As per customer ledger dated 19.09.2020 on page no. 17 of the complaint]
19.	Occupation certificate	17.11.2022



		(Page no. 11 of the additional documents filed by the respondent on 08.09.2023)
20.	Offer of possession	31.07.2022 (Page no. 4 of the additional documents filed by the respondent on 08.09.2023)

**B. Facts of the complaint**

6. The complainant has made the following submissions in the complaint: -
- I. That the "Green Court" project under Affordable Group Housing Scheme, Haryana is being developed by the respondent herein, situated at Village Hayatpur, Sector, 90, Gurugram, Haryana wherein the complainant had booked a 2 BHK flat of 590 sq. ft. and balcony area of 100 sq. ft. together with one open parking space in the said project. The Director, Town and Country Planning (DTCP), Haryana has granted license to develop and construct said Group Housing Colony in favour of the respondent as per advertisement published by the respondent.
  - II. That the respondent published an advertisement in newspaper inviting general public for booking of residential apartment under the Affordable Housing Scheme vide advertisement dated 26.12.2014 in Hindi newspaper namely "Dainik Jagran". As per advertisement dated 26.12.2014, it was mentioned that M/s Aster infracore Pvt. Ltd. has been issued license as colonizer/developer bearing license no. 61 & 62 of 2014 dated 07.07.2014. Further it was stated in the advertisement that building plan was approved on 22.10.2014 vide memo no. ZP-989/AD (RA)/2014/24727. That pursuant to advertisement in newspapers, complainant relying upon the advertisements and believing it to be true invested his hard earned money in respondent's project.

- III. That the complainant made an application for allotment of a flat via application no. 002330 dated 28.01.2015 and paid an amount of Rs.1,20,500/- as booking/application amount i.e., 5% of apartment/flat cost to the respondent via cheque bearing no. 997498 dated 27.01.2015 and respondent issued receipt no. 396 dated 02.02.2015.
- IV. That ultimately in draw, the complainant was allotted a 2BHK unit bearing no. 0903 on 9<sup>th</sup> floor in block/tower J (carpet area 590 sq. ft. i.e. 54.83 sq. mtrs. & balcony area of 100 sq. ft. i.e., 9.29 sq. mtrs. along with parking space) at the project "Green Court". The complainant paid through RTGS Rs.4,82,000/- i.e., 20% of unit cost on 14.09.2015 and respondent issued receipt no. 3532 dated 14.09.2015. The complainant has made a total payment of Rs.25,14,944/- so far.
- V. That the builder buyer's agreement was executed between the parties on 16.02.2016, wherein general terms and conditions were mentioned and both the parties are contractually bound on those terms and conditions. As per clause 8(a) of agreement the builder was required to offer the possession of flat within a period of 4 years from the date of approval of building plan or grant of environmental clearance but the respondent has failed to deliver the possession of flat within the stipulated time.
- VI. That the respondent also issued a payment schedule plan, which mentioned the time and payment to be remitted to the respondent by the complainant. It is pertinent to mention that payment plan issued by the respondent was installment payment plan and complainant has paid all the installment and nothing is due against the complainant. The total consideration of the said flat was Rs.24,10,000/- towards the sale price for purchase of the said flat including EDC, IDC, PLC etc.

- VII. That in terms of clause 5(iii)(b) of Haryana Affordable Housing Policy, 2013, all flats in a specific project shall be allotted in one go within four months of sanction of building plans or receipt of environmental clearance whichever is later and possession of flats shall be offered within the validity period of 4 years of such sanction/clearance. Clause 7(ii) provides that - No allotment of flat shall be permitted until the date of commencement of the project. A combine reading of the clause 5(iii)(b) and clause 7(ii) of Haryana Affordable Housing Policy prescribe that sanction of building plan and environmental clearance must precede at least 4 months from the date of allotment of flat. As per advertisement by the respondents, building plan was approved on 22.10.2014. Draw for allotment of flat was held on 19.08.2015 and builder buyer's agreement was signed on 16.02.2016. Therefore, in terms of Affordable Housing Scheme, 2013 cutoff date for counting the period of 4 years for handing over the possession of unit would be 19.04.2019. Thus respondent was required to hand over the possession latest by 19.04.2019. Respondent has delayed for almost three years in offering the possession of flat to the complainant. The complainant is entitled to 15% interest as delayed possession charge in terms of clause 5(iii)(b) of Haryana Affordable Housing Policy, 2013.
- VIII. That as per Haryana Building Code, 2016 as well as Haryana Building Code, 2013 there is provision of deemed sanction if application complete in all respects for approval of building plan is not rejected/approved by the competent authority within 60 days. Complainant cannot be made to suffer for any delay or wrongs caused by the respondent/developer. Respondent/developer has not acted in accordance with Haryana Affordable Housing Policy, 2013 as well as statutory provisions and there

is deliberate delay on the part of respondent developer in completion of project.

- IX. That the respondent kept on demanding the payments from the complainant but never showed their readiness and willingness to complete the construction on time. The respondent is giving only fake assurances from the past 3 years. It is pertinent to mention that the respondent has mislead the complainant by suppressing the material information at all times.
- X. That the respondent had taken the amount of Rs.6,02,500/- i.e., 25% of the total sale consideration from the complainant before entering into the builder buyer's agreement. As per section 13(1) of the Act, 2016, a promoter is not entitled to accept a sum more than 10% of the cost of the apartment as an advance payment from a person without first entering into the agreement for sale. Thus respondent has caused wrongful loss to the complainant and wrongful gains to himself and thus resorting to unjust richment.
- XI. That the respondent after indulging in unfair trade practice, had intentionally grabbed the hard earned money out of total consideration of the floor on the basis of unfair agreement and not even take any interest to complete the said project within the stipulated time as per agreement read with Affordable Housing Policy, 2013. Therefore, complainant is entitled to interest for every month of delay, till handing over of possession in terms of Section 18 of the Act of 2016.

**C. Relief sought by the complainant: -**

7. The complainant has sought following relief(s):
- I. Direct the respondent to pay delayed possession charge/interest for delay in handing over the possession of the unit since 19.04.2019 to

the complainant @ 15% per annum as charged /chargeable by the respondent from the complainant on delayed installment till the respondent hands over the legal and rightful possession of the flat to the complainant as per clause 5(iii)(b) of Haryana Affordable Housing Policy, 2013.

- II. Direct the respondent to complete the development of the flat along with all facilities and amenities like water, electricity, roads, parks, club etc. immediately.
  - III. Direct the respondent to deliver the possession of the unit to the complainant, after receiving the occupation certificate and other required approvals from the competent authorities.
  - IV. Direct the respondent to provide the fixed date of delivery of possession.
  - V. Direct the respondent to not charge anything which is not mentioned in the agreement and scheme.
  - VI. Direct the respondent to pay an amount of Rs.50,000/- as litigation expenses incurred by the complainant.
8. 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**

9. The respondent is contesting the complaint on the following grounds:
- I. That the respondent is engaged in the business of real estate development and it proposed to develop an affordable residential housing scheme/colony namely "Green Court" situated in the revenue estate of village Hayatpur, Sector-90, Gurgaon, and Haryana. The said project was an affordable housing project under Affordable Group

Housing Policy, 2013 of the government of Haryana. The policy as formulated by the State Government was/is intended to encourage the planning and completion of group housing projects wherein apartments of pre-defined size are made available at pre-defined rates within a targeted time frame as prescribed under the policy to ensure increased supply of affordable housing in the urban house market to the deserving beneficiaries.

- II. That the complainant submitted an application to the respondent for booking/allotment of a 2BHK flat having a carpet area of 590 sq. ft. and balcony area of 100 sq. ft. in the said scheme/colony. The application no. 002330 dated 28.01.2015 signed and submitted by the complainant had necessary particulars of the residential scheme such as description of land, license and building plans granted/approved by DTCP, Haryana and also salient terms and conditions on which the allotment was to be made to the complainant. The complainant also read and understood the terms and conditions of the flat buyer agreement and undertook to sign the same as and when required by the respondent.
- III. That the application form also contained the payment plan in accordance to which the complaint was to make the due instalments as specified. That the payment plan clearly stated at the time of application 5% of the basic sale price, within 15 days from the issuance of allotment letter 20% of BSP and thereon at intervals of six months 12.5% of the total BSP was to be paid respectively. The payment plan was in accordance with the payment plan prescribed in the said policy. Under the policy, the allotment was required to be



made through the draw of lots to be held in the presence of a committee consisting of a Deputy Commissioner or his representative (at least of the Cadre of Haryana Civil services), Senior Town Planner(Civil officer), DTP of the concerned District. The policy prescribed a transparent procedure for allotment of a flat in the affordable housing project of the policy which interalia included advertisements for booking of apartments by the coloniser/developer on two occasions at one week interval in one of the leading English National Daily and two Hindi newspapers having circulation of more than ten thousand copies in the state of Haryana to ensure adequate publicity of the project, submissions of the applications by the interested persons, scrutiny of all application by the coloniser /developer by overall monitoring of the concerned DTP within a period of three months from the last date of receipt of applications, fixing of date of draw of lots by the concerned senior Town planner, publication of the advertisement issues by the coloniser informing the applicants about the details regarding date/time and venue of draw of lots in the newspaper etc. The said procedurē as laid down in the policy was duly followed by the respondent.

- IV. That the complainant was informed by the respondent vide its letter dated 12.08.2015, that the draw is to be held on 19.08.2015 at 10.30 a.m. he was invited to the said event. The draw of lots was conducted at the given date, time and place in the presence of required officials of the Government of Haryana. The complainant was one of the successful applicants in the said draw and as such the respondent vide its allotment letter dated 19.08.2015, intimidated the complainant

that he had been allotted a two BHK Flat measuring carpet area 590 sq. ft. and balcony area 100 sq. ft. in the said project

- V. In the aforesaid facts and circumstances, it is simply clear that the respondent has neither indulged into any unfair trade practice nor committed any deficiency in service. It is submitted that in the real estate projects like the project in question the development being multi-storied group housing development, the default in payment committed by even one allottee adversely affects the development of other units as well in as much as the financial planning, the pace of the project etc. gets adversely affected thereby causing impediment in the development and overall delay in delivery of the project.
- VI. The complainant was fully aware that the project in question was a project under the affordable housing policy, 2013 of the Government of Haryana which contained strict checks and balances to protect interests of all stake holders with special emphasis on the protection of rights of the potential purchasers of the flats. Almost each and every aspect of the transaction was governed by the policy. Even the draw of the flat was to be held after permission of the government and in the presence of government officials and in the permission to conduct draw was to be granted only after all the necessary approvals were in place. The flat buyer's agreement contained provisions that were in consonance with the Policy guidelines/parameters. As per the agreement the Respondent was to start the construction from the date of environment clearances which was granted on 22.01.2016.
- VII. It is relevant to mention here that from November 2019 onwards things started moving out of control of the respondent. Many force

majeure events, situations and circumstances occurred that made the construction at site impossible for a considerable period of time. Such events and circumstances included inter-alia

- Repeated bans on construction activities by EPCA, NGT and Hon'ble Supreme Court of India;
- Nationwide lockdown due to emergence of Covid-19 pandemic.
- Massive nationwide migration of labourers from metropolis to their native villages creating acute shortage of labourers in NCR region;
- Disruption of supply chains for construction materials and non-availability of them at construction sites due to Covid-19 pandemic;
- Closure/restricted functioning of various private offices as well as government offices disrupting the various approvals required for the real estate projects;
- Resultant financial distress etc.;
- The Environmental Pollution (Prevention and Control) authority for NCR ("EPCA") vide its notification bearing no. EPCA-R/2019/L49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted into complete 24 hours ban from 01.11.2019 to 05.11.2019 by EPCA vide its notification no. EPCA -R/2019/ L-53 dated 01.11.2019. The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ Petition no. 1309/1985 titled as "**M.C. Mehta vs. Union of India**" completely banned all construction activities in NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020;
- The repeated bans forced the migrant labourers to return to their native states/villages creating an acute shortage of labourers in NCR region. Due to the said shortage, the construction activity could not resume at full throttle even after lifting of ban by the Hon'ble Supreme Court. Even before the normalcy in construction

activity could resume, the world was hit by the Covid-19 pandemic presented yet another force majeure event that brought to halt all activities related to the project including construction of remaining phase, processing of approval files etc.;

- The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I (A) recognised that India was threatened with the spread of Covid-19 epidemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started from March 25, 2020. By virtue of various subsequent notifications, the ministry of Home Affairs, GOI further extended the lockdown from time to time. Various State Governments including the Government of Haryana have also enforced several strict measures to prevent the spread of Covid-19 pandemic including imposing curfew, lockdown, stopping all commercial, construction activity;
- This situation again resulted in massive nationwide migration hit of labourers from metropolis to their native villages creating acute shortage of labourers in NCR regions, disruption of supply chains for construction materials and availability of them at construction sites and the full normalcy has not returned so far;
- Even before the nation could recover fully from the impact of the first wave of Covid-19, the second wave hit very badly the entire nation, particularly NCR region which resulted in another lockdown from April 2021 till June 2021 and now the threat of third wave is looming large;
- It is a matter of common knowledge and widely reported that even before the advent of such events, the real estate sectors were reeling under severe strain. However, such events/incidents as above noted really broke the back of the entire sector and many real estate projects got stalled and came to the brink of collapse. The situation was made worse by the dreaded second wave which again impeded badly the construction activities. The said unprecedented factors beyond control of the respondent and force majeure events have resulted so far in time loss of almost 14

- months in total and as such all timelines agreed in settlement agreement stood extended at least by 14 months, if not more;
- The respondent is perhaps one of the very few developers in NCR region who had fought valiantly during these testing times/odd circumstances and completed the project. Even the occupancy certificates were applied on 04.08.2021. The application made by the respondent is pending without any objection and/or deficiency ever pointed out perhaps because of limited restricted functioning of the public offices;
  - The respondent had completed all residential towers including the creche, community hall, lifts, fire fighting systems are ready and functional with all necessary approvals in place. Round the clock security is being provided with all necessary security/ward and watch arrangement in place. The project is thus fully habitable;
  - Every responsible person/institution in the country has responded appropriately to overcome the challenges thrown by Covid-19 pandemic and have suo-motu extended timeliness for various compliances. The Hon'ble Authorities have also extended time periods given at the time of registration for completion of the project. The HRERA has also for the same reasons granted extension to all the real estate projects including the project in question;
  - That considering the time lost due to above force majeure circumstances, which is required to be excluded in computing the timelines given in the agreement, there shall be no delay on part of the respondent, much less intentionally;
  - That the construction activities were halted several times due to the orders passed by NGT and Supreme Court to control the pollution level in NCR including Gurugram;
  - That the Learned Civil Judge Smt. Sakshi Saini, Gurugram has also given an ad interim order directing the Respondent to give the interest on the concerned flat from November, 2021 onwards @ 8.75% p.a. That it is also not out of place to mention here that the said order was given after going through the relevant documents regarding the said project and also directing the respondent

company to handover the peaceful possession of the said flat after the receipt of the balance payment from the allottee.

10. 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 submission made by the complainant.

**E. Jurisdiction of the authority**

11. 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**

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

**E.II Subject matter jurisdiction**

13. 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) The promoter shall-*

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

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

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

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

**F. Findings on objections raised by the respondent**

**F.1 Objection regarding passing of various force majeure conditions such as orders by EPCA, lockdown due to Covid-19 pandemic, shortage of labour and NGT orders.**

15. The respondent/promoter raised an objection in its reply as well as during the course of arguments that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Environmental Pollution (Prevention and Control) Authority for NCR (hereinafter, referred as EPCA) from 26.10.2019 to 14.12.2019, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT). Further, the authority has gone through the possession clause of the agreement and the Affordable Group Housing Policy, 2013 and observed that the respondent/developer proposes to handover the possession of the allotted unit within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later. In the present case, the date of approval of building plan is 22.10.2014 and environment clearance is 22.01.2016 as taken from the project details. The due date is calculated from the date of environment clearance being later. The events such as Hon'ble Supreme Court of India to curb pollution in NCR, various orders passed by NGT,

EPCA etc., were for a shorter duration of time and were not continuous being annual feature. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and plea taken by respondent is devoid of merits.

16. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (1) (Comm.) no. 88/2020 and LAS 3696-3697/2020* dated 29.05.2020 has observed as under:

*"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."*

17. The respondent was liable to handover the possession of the said unit by 22.01.2020 and is claiming benefit of lockdown which came into effect on 24.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.
18. In view of the above, the objection raised by the respondent to extend the due date of handing over possession due to force majeure circumstances due to various authorities/tribunals/courts orders and COVID-19 is declined.

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



**G.I Direct the respondent to pay delayed possession charge/interest for delay in handing over the possession of the unit since 19.04.2019 to the complainant @ 15% per annum as charged/chargeable by the respondent from the complainant on delayed installment till the respondent hands over the legal and rightful possession of the flat to the complainant as per clause 5(iii)(b) of Haryana Affordable Housing Policy, 2013.**

19. In the present compliant, 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.

***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."*

20. As per clause 8(a) of the buyer agreement provides for handing over of possession and is reproduced below: -

*Subject to the force major circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof, including but not limited to the timely payment of installments of the other charges as per the payment plan, Stamp Duty and registration charges, **the Developer proposes to offer possession of the Said Flat to the Allottee within period of 4(four) years from the date of approval of building plans or grant of environment clearance, whichever is later (hereinafter referred to as the "Commencement Date.")***

21. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are 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 allottees 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. The incorporation of such clause in the buyer developer agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused its dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

22. **Due date of handing over possession and admissibility of grace period:** Vide order dated 30.04.2024, the counsel for the respondent brought into the notice of the Authority, that the authority has already considered the due date of possession as 06.11.2020 by calculating 4 years from the date of consent to establish i.e. 06.05.2016 plus 6 months grace period in lieu of covid-19. However, aggrieved by this order by not allowing the delay on account of ban on construction etc. as already allowed by the Ld. Civil Judge in suit no. CS-3317-2022, the respondent preferred an appeal against the said order of authority for not allowing extra grace period on account of delays due to reason beyond the control of the promoter.
23. Although, in complaints bearing no. 7418 of 2022 and 7421 of 2022, clause 9.1 read with 9.5 talks about possession of the said flat that *the developer shall, within 3 months from the schedule Date of completion, called upon the Allottee in writing (Notice for offer of possession) to take possession of the said Flat and to execute necessary indemnities, undertaking, maintenance agreement and other documentation as the developer may prescribed within 1 month of the date of dispatch of the notice for offer of possession to the*

address of the Allottee registered in the records of the developer. The buyer's agreement in the said complaints were executed on 25.06.2019 and 21.06.2019 respectively. Since, the Affordable Group Housing Policy was introduced by the department in the year 2013 therefore, any possession clause incorporated in the BBA which is not in consonance of Affordable Group Housing Policy 2013 shall be treated as null and void. Accordingly, the said clauses hereby stands redundant.

24. Moreover, on the documents and submissions made by both the parties, the Authority is of the considered view that the buyer's agreement and the Affordable Group Housing Policy, 2013 the promoter has proposed to hand over the possession of the said flat within a period of 4 years from the date of approval of building plans (22.10.2014) or grant of environment clearance, (22.01.2016) (hereinafter referred to as the "Commencement Date"), whichever is later and has sought further extension of a period of 6 months (after the expiry of the said time period of 4 year) but there is no provision in relation to grace period in Affordable Group Housing Policy, 2013. As such in absence of any provision related to grace period, the said plea raised by the respondent is disallowed in the present case.
25. **Admissibility of delay possession charges at prescribed rate of interest:** However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under: -

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

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate

*prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

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

26. 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.
27. 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., 13.08.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
28. 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;"*
29. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11% by the respondent/promoter which is the same as is being granted her in case of delayed possession charges.

30. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 8(a) of the agreement executed between the parties on 16.02.2016, the possession of the subject apartment was to be delivered within stipulated time within 4 years from the date of approval of building plan (22.10.2014) or grant of environment clearance i.e. (22.01.2016) whichever is later. Therefore, the due date of handing over possession comes out to be 22.01.2020. Occupation certificate was granted by the concerned authority on 17.11.2022 and thereafter, the possession of the subject flat was offered to the complainant on 24.11.2022. 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 unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 16.02.2016 to hand over the possession within the stipulated period.
31. 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 17.11.2022. The respondent offered the possession of the unit in question to the complainant only on 24.11.2022, 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 she 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 actual handing over of possession or offer of possession plus two months whichever is earlier.

32. 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 is entitled to delayed possession at prescribed rate of interest i.e., 11 % p.a. w.e.f. 22.01.2020 till the expiry of 2 months from the date of offer of possession (24.11.2022) which comes out to be 24.01.2023 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

**G.II Direct the respondent to complete the development of the flat along with all facilities and amenities like water, electricity, roads, parks, club etc. immediately.**

**G.III Direct the respondent to deliver the possession of the unit to the complainant, after receiving the occupation certificate and other required approvals from the competent authorities.**

**G.IV Direct the respondent to provide the fixed date of delivery of possession.**

33. On 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.

34. The grievance of the complainant is that the development work of the project is not complete and the respondent be directed to complete the said development work and provide the physical possession of the allotted unit.

35. The authority observes that the respondent/promoter has offered the possession of the allotted unit on 24.11.2022, after obtaining the occupation

certificate on 17.11.2022 from the Directorate of Town & Country Planning, Haryana in respect of the said project. As per section 19(10) of the Act of 2016, the complainant is duty bound to take possession of the allotted unit within a period of 60 days after receipt of the occupation certificate. Although, the respondent/promoter is also held responsible for supply of water, electricity, etc. till these services are made available by the concerned Authority as per their scheme.

**G.V Direct the respondent to not charge anything which is not mentioned in the agreement and scheme.**

36. The complainant has failed to specifically mention as to what charges has been charged by the respondent which do not form part of the buyer's agreement.
37. The authority vide order dated 09.12.2022, passed in case bearing no. **4147 of 2021 titled as Vineet Choubey V/s Pareena Infrastructure Private Limited** and also in the complaint bearing no. **4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Limited**, has already decided that the promoter cannot charge anything which is not part of the buyer's agreement subject to the condition that the same are in accordance with the prevailing law. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement and the provisions of Affordable Housing Policy of 2013 and is directed to charge the demands relying on the above said orders.

**G.VI Direct the respondent to pay an amount of Rs.50,000/- as litigation expenses incurred by the complainant.**

38. Hon'ble Supreme Court of India, in case titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.** (civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled for claiming compensation under sections 12, 14, 18 and section 19 which



is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. Therefore, the complainants are at liberty to approach the adjudicating officer for seeking compensation.

39. In complaint(s) bearing no. 7418/2022, 7421/2021, 2784/2023 and 2785/2023, the complainant has sought some other relief with regard to restrain/refund power backup charges, dual electrical meter charges, labour cess, VAT, interest free operational security, administrative charges, one year operational charges, GST, and to construct the construction as per Affordable Group Housing Policy of 2013 and to earmarked two wheeler parking.
40. The complainant(s) submitted that the respondent company has offered the possession of the allotted unit on 24.11.2022 along with statement of account the said letter contains several illegal/unreasonable demands under different heads i.e., Interest Free Operational Security, Power backup, CGST and SGST on construction, other charges and interest, external electrification charges, dual meter charges, service charge and Elect. Cons., labour cess, VAT and administration charges and the same is mentioned below:-

S. No.	Charges	Dues	Receipts	Balance
1.	Basic	24,50,000	24,10,000	40,000
2.	Service tax on basic	20,593.45	20,593.45	0.00
3.	Interest Free Operational Security	15,000	0.00	15,000
4.	Power backup	65,000	0.00	65,000
5.	CGST on construction	43,775	42,175	1,600
6.	SGST on construction	43,775	42,175	1,600
7.	CGST on other charges	12,870	0.00	12,870
8.	SGST on other charges	12,870	0.00	12,870
9.	CGST on interest	257.13	257.13	0.00
10.	SGST on interest	257.13	257.13	0.00





11.	External electrification charges	36,0000	0.00	36,000
12.	Duel meter charges	9,000	0.00	9,000
13.	Service charge and Elect. Cons.	18,000	0.00	18,000
14.	Labour cess	11,400	0.00	11,400
15.	VAT	48,654	0.00	48,654
16.	Administration charges	15,000	0.00	15,000
<b>Total Amount payable</b>		<b>28,02,451.71</b>	<b>25,15,457.71</b>	<b>2,86,994.00</b>

41. The authority has already dealt with the above charges in the compliant bearing no. *4147 of 2021 titled as Vineet Choubey V/s Pareena Infrastructure Private Limited* and also the complaint bearing no. *4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Limited*, wherein the authority has held as under:
- **Direct the respondent to earmarked two-wheeler parking in the project.**
42. As per clause 4(iii)(b) of the affordable policy, 2013 states that only one two-wheeler parking site shall be earmarked for each flat, which shall be allotted only to the flat owners. The parking bay of two-wheelers shall be 0.8m x 2.5m unless otherwise specified in the zoning plan. Accordingly, the respondent is directed to earmark one two-wheeler parking space to the complainant in the project.
- **Direct the respondent to provide the valid offer of possession, physical possession of the flat and also direct the respondent to execute the conveyance deed.**
43. The Authority observes that the respondent has offer the possession vide letter dated 24.11.2022, after obtaining the occupation certificate and the said offer of possession is valid. Further, as per clause 10 of the buyer's agreement provides for the execution and registration of the conveyance deed. The relevant clause is reproduced hereinafter for ready reference:-
- (a). *The Sale/Conveyance Deed of the Flat as well as the proportionate undivided share of the land underneath the building shall be executed by the Developer in favour of the Allottee(s) as permissible under*



*applicable laws. The Allottee(s) shall have no Right in the land underneath the Project except the indivisible, impartiable, unidentified rights in the Project Land proportionate to the area of Flat hereto agreed to be sold and necessary easementary rights pertaining to that flat.*

- (b). The Developer shall hand over the possession of the Flat to the Allottee(s) only on receipt of the entire amount due in terms of the Agreement and registration of the Sale Deed in favour of the Allottee(s).*
- (c) All costs of stamp duty, registration fee and other miscellaneous/incidental expenses for execution and registration of the Sale Deed of the Flat shall be borne and paid by the Allottee(s). If any stamp duty is levied on the execution of this Agreement the same shall also be borne and paid by the Allottee(s).*

44. The authority has gone through the aforesaid clause of the agreement and a reference to the provisions of section 17 (1) is also must, which provides as under:

***"Section 17: - Transfer of title***

*17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:*

*Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."*

45. The authority is of view that promoter is under an obligation to get conveyance deed executed in favour of the complainants as per the section 17(1) of the Act, 2016. Since, the possession of the allotted units has already been offered to the allottee(s) on 24.11.2022 after obtaining occupation certificate on 17.11.2022, so the respondent is directed to get the conveyance deeds of the subject unit executed within a period of 3 months from the date of this order upon payment of requisite stamp duty

by the complainants as per norms of the state government in terms of section 17 of the Act.

- **Direct the respondent to refund External electrification charges.**
- **Direct the respondent to refund dual electrical charges.**

46. The authority has already dealt with the above charges in the compliant bearing no. **CR/4147/2021** titled as **Vineet Choubey V/S Pareena Infrastructure Private Limited** wherein the authority has held that the colonizer would provide the detail of expenditure to the complainant(s) and they can verify the same from DHBVN, if required. Thus, when the claimant(s) agreed to pay charges under this head on the condition of the promoter providing the details of expenditure to them and the same to be verified by them, then promoter can legally charge the same from them.

- **Direct the respondent to refund labour cess.**

47. That the respondent in its offer of possession letter dated 24.11.2022 has claimed reimbursement of labour cess. However, the respondent has failed to provide the clarification on what account the respondent has charged an amount on reimbursement of labour cess.

48. 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.

- **Direct the respondent to refund VAT charges.**

49. The promoter is entitled to charge VAT from the allottees for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT) under the amnesty scheme. However, if the respondent opted for composition levy, then also, the incidence of such taxes shall be borne by the respondent only. But if composition scheme is not availed, VAT may be charged on proportionate basis subject to furnishing of proof of having its actual payment to the concerned taxation Authority.

- **Direct the respondent to refund Interest free operational security.**

50. The authority has already dealt with the above charges in the compliant bearing no. CR/4031/2019 titled as *Varun Gupta V/s Emaar MGF Land Limited* wherein the authority has held that the promoter may be allowed to collect a reasonable amount from the allottees under the head "IFSD". However, the authority directs and passes an order that the promoter must keep the amount collected under that head in a separate bank account and shall maintain the account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFSD amount and the interest accrued thereon, it must provide details to them. It is further clarified that out of this IFMS/IFSD account, no amount can be spent by the promoter for the expenditure for which he is liable to incur/discharge the liability under section 14 of the Act.



51. According to the above findings, the respondent is correct in charging the said amount under the following heads and the said offer was not accompanied with any illegal demands. Therefore, the complainants are liable to pay the aforesaid demands as raised by the respondent vide letter of offer of possession dated 24.11.2022.

- **Direct the respondent to refund one year advance operational charges.**

52. The respondent in the present matter has demanded one year advance operational charges from the complainants at the time of offer of possession. The authority observes that clause 4(v) of the policy, 2013 talks about maintenance of colony after completion of project which is reproduced as under:

*"A commercial component of 4% is being allowed in the project to enable the coloniser to maintain the colony free-of-cost for a period of five years from the date of grant of occupation certificate, after which the colony shall stand transferred to the "association of apartment owners" constituted under the Haryana Apartment Ownership Act 1983, for maintenance. The coloniser shall not be allowed to retain the maintenance of the colony either directly or indirectly (through any of its agencies) after the end of the said five years period. Engaging any agency for such maintenance works shall be at the sole discretion and terms and conditions finalised by the "association of apartment owners" constituted under the Apartment Ownership Act 1983."*

53. It is pertinent to mention here that the authority on 11.04.2022 requested DTCP, Haryana to give clarification with respect to the issue of maintenance. In response of the said letter sent by the Authority, an email dated 29.11.2022 has been received from DTCP intimating that the issue of free maintenance of the colony in terms of section 4(v) of the Affordable Group Housing Policy, stands referred to the Government and clarification will be issued by DTCP as and when the approvals is received from the Government.

54. As per the clarification regarding maintenance charges to be levied on affordable group housing projects being given by DTCP, Haryana vide

clarification no. PF-27A/2024/3676 dated 31.01.2024, it is very clearly mentioned that the utility charges (which includes electricity bill, water bill, property tax waste collection charges or any repair inside the individual flat etc.) can be charged from the allottees as per consumptions.

55. Accordingly, the respondent is directed to charge the maintenance/use /utility charges from the complainants-allottees as per consumptions basis as has been clarified by the Directorate of Town and Country Planning, Haryana vide clarification dated 31.01.2024.

- **Direct the respondent to provide the architects confirmation for increase of 10 sq. ft. carpet area.**

56. The complainant has contended that the respondent has increased the carpet area of the allotted unit vide offer of possession for fit out letter dated 31.07.2022, without giving any formal information, or by taking any written constant from the allottee(s). The said fact cannot be disputed by the respondent in its reply.

57. On perusal of documents on record, the carpet area of the unit was 590 sq. ft. and it was increased by 10 sq. ft. resulting in total carpet area of 600 sq. ft. As such, the total area increased by 1.69% which is less than 10%. That the units and other components of the carpet area on the project have been constructed in accordance with the plans approved by the competent Authorities. Further, no clause/provision in the buyer's agreement as well as the Affordable Group Housing policy 2013 with regard to increase in area. Thus, in view of the above the respondent/promoter shall furnish the details with justification to the complainant(s) about the increase in area of the unit.

- **Direct the respondent to refund administrative charges.**

58. That a nominal amount of Rs.15000/- can be charged by the promoter /developer for any such expenses which it may have incurred for

facilitating the said transfer as has been fixed by the DTP office in this regard.

- **Direct the respondent to refund the GST charged on other charges.**

59. The Authority is of the view that the rate of GST for affordable group housing projects were revised from 8% to 1% by the GST Council in its 34<sup>th</sup> GST Council meeting held on 19.03.2019 for the projects commenced on or after 01.04.2019. It is observed that the instant project "Green Court", was commenced on 22.01.2016 i.e., from date of environment clearance. Since the said project do not fall the said revision policy accordingly, the respondent is right in collecting the said amount from the complainants in this regard.

- **Direct the respondent to construct community sites as per guidelines of Haryana Affordable Group Housing Policy, 2013.**

60. The DTCP, Haryana inspects whether the said project is constructed as per the building plans and thereafter, the occupation certificate is issued. Since in the present matter the respondent has received an occupation certificate of the community building w.r.t. the said project on 20.04.2021 therefore, the complainants may approach the department for any grievance if the said sites are not constructed as per the approved layout plans.

#### **H. Directions of the authority**

61. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- i. The respondent is directed to pay interest to the complainant(s) against the paid-up amount at the prescribed rate i.e., 11% per annum for every month of delay on the amount paid by the complainant(s)



from due date of possession till the date of offer of possession plus two months or actual taking over of possession whichever is earlier to the complainant(s) as per proviso to section 18(1) of the Act read with rule 15 of the rules. 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., 11% 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(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.
- iv. The respondent is directed to get the conveyance deeds of the subject unit executed within a period of 3 months from the date of this order upon payment of requisite stamp duty by the complainants as per norms of the state government in terms of section 17 of the Act.
- v. The respondent is directed to charge the maintenance/use/utility charges from the complainants-allottees as per consumption basis as has been clarified by the Directorate of Town and Country Planning, Haryana vide clarification dated 31.01.2024.
- vi. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement and not as per the provisions of Affordable Group Housing Policy, 2013. The respondent is also not entitled to claim holding charges from the complainant



/allottee 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 decided on 14.12.2020.

62. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
63. Complaint as well as applications, if any, stands disposed off.
64. Files be consigned to registry.

  
**(Sanjeev Kumar Arora)**  
Member

  
**(Vijay Kumar Goyal)**  
Member

  
**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.08.2024