BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	199 of 2024
Order reserved on:	22.11.2024
Order pronounced on:	24.01.2025

1. Rajesh Sahay
2. Shobhana Sahay

Address at: A-8/001, Vatika City Homes, Sector-83, Vatika India Next, Gurgaon — **Complainants**

Versus

1. M/s Ansal Housing Limited

Regd. office: 606, 6th floor, Indra Prakash, 21, Barakhamba Road, New Delhi-110001

2. Sems Estate Management Services Private Limited

Address at: GF-06, Plot no. 11, Kirti Shikhar, District Centre, Janakpuri, New Delhi-110058 — **Respondents**

CORAM:

Shri Vijay Kumar Goyal — **Member**

APPEARANCE:

Sh. Himanshu Gautam	Advocate for the complainants
Sh. Hanu Mittal (Proxy)	Advocate for the respondent no. 1
None	Advocate for respondent no. 2

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 under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, 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.	Project name and location	Ansal Hub 83, Sector 83 Gurugram
2.	Project area	2.60acres
3.	Nature of project	Commercial Project
4.	RERA registered/not registered	Registered 09/2018 Dated 08.01.2018
5.	DTCP license no. & validity status	License No. 71 of 2010 dated 15.09.2010
6.	Allotment letter	24.02.2014 (Page no. 15 of complaint)
7.	Shop no.	GF 34 (page no. 15 of complaint)
8.	Unit area	322 sq. ft. (Page no. 15 of the complaint)
9.	Endorsement in favor of complainants (subsequent allottee)	17.06.2017 (page no. 34 of complaint)
10.	Date of builder buyer agreement	Not Executed

11.	Date of sanction of building plans	Not on records
12.	Possession clause	***26*** **The Developer shall offer possession of the Unit anytime within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter** whichever is later, subject to force-majeure circumstances such as act of God, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy labour equipment facilities material or supplies, failure of transportation, strike, lock outs, action of labour union, any dispute with any contractor / construction agency appointed by the Developer, change of law, or any notice, order, rule or notification issued by any Courts/Tribunals and/or Authorities, delay in the grant of part/ full completion (occupancy) certificate by the Government and / or any other public or competent authority or intervention of Statutory Authorities, or any other reason(s) beyond the control of the Developer. It is specifically being agreed between the Developer and the Allottee(s) that during the period Allottee(s) is to be paid monthly assured return, Allottee(s) will not seek possession from Developer and the Developer will not offer possession to the Allottee(s). The Allottee(s) shall not be entitled to any compensation on the grounds of delay in offering possession due to reasons beyond the control of the Developer. *(Emphasis supplied)*

13.	Due date of possession	24.02.2017 (Calculated 36 months from the date of allotment letter)
14.	Total sale consideration	Rs.30,90,073/- (as per payment plan on page no. 31 of complaint)
15.	Paid up amount	Rs.33,81,410/- to R1 Rs. 78,523/- to R2 (as per receipts annexed in complaint)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not Offered

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

a. That on 06.07.2011, the first buyer M/S Jwala Associates Private Limited booked a shop bearing unit no. GF 034 admeasuring 322 sq. ft. in the project named as "Ansals Hub 83" situated at Sector 83, Gurugram.

b. That on 28.11.2011, the first buyer M/S Jwala Associates Private Limited transferred all the rights and liabilities in respect of such allotment to Mrs. Radhika Sundram with due permission of respondent no. 1 and further on 17.06.2017, the erstwhile buyer Mrs. Radhika Sundram transferred all the rights and liabilities in respect of such allotment to the complainants Mr. Rajesh Sahay and Mrs. Shobhana Sahay with due permission of the respondent no. 1. Accordingly, the complainants were allotted a shop bearing unit no. SHOP-GF034 in the said project.

c. That on 24.02.2014, builder buyer agreement was entered into between the parties wherein as per clause 26, the developer should offer possession of unit within 36 months from the date of sanction of building plans or date of execution of allotment letter, whichever is later i.e. 24.02.2017, but even after almost 7 years, possession has not been offered yet.

d. That the complainants have written multiple emails to the respondent no. 1, to hand over the physical possession of the said shop or at least inform them about the construction status of the said project and date of possession. Initially respondent no. 1 didn't even bother to reply to the complainant's emails but after multiple follow ups finally respondent no. 1 replied and informed the complainants that they would start offering possession for fitouts in next 2-3 months. But even after almost 2 years and 6 months of that reply, the project is still incomplete and occupancy certificate has not yet been obtained by the respondent no.1.

e. That vide letter dated 02.03.2022, the respondent no. 1 unlawfully, arbitrarily and mischievously compelled the complainants to make the payment of Rs. 78,523/- to take the 'possession for fitouts' by threatening to impose holding charges on them @ Rs. 5/- per sq. ft. per month if the complainants do not make the payment within 180 days. The term 'possession for fitouts' was merely an eyewash in itself as the respondent no. 1 had not obtained occupancy certificate (OC) from the concerned authority and was not authorised to offer possession.

f. That as per the builder buyer agreement, the committed date to offer the possession was 24.02.2017 and payment plan was construction linked plan, but without even completing the construction work of the said project, respondent no. 1 not only demanded and accepted 100%

of the total consideration amount against the said shop, but also threatened and compelled the complainants to pay Rs. 78,523/- towards common area maintenance charges to respondent no. 2.

g. That repeated calls, meetings and correspondences with the respondent no. 1 and multiple visits to know the actual construction status not only caused loss to the complainants in terms of time, money and energy but also caused mental agony to him.

h. That the cause of action arose in favour of the complainants and against the respondents from the date of booking of the said unit and it further arose when respondent no. 1 failed/neglected to deliver possession of the said unit within a stipulated time period.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).

(i) Direct the respondent no. 1 to pay interest for every month of delay @ 24% p.a. since 24.02.2017 as per provisions of clause 2 (za) and as per section 18(1) of Real Estate (regulation and Development) Act, 2016.

(ii) Direct the respondent no. 1 to complete the project in expeditious manner and offer the possession of the unit along with all promised amenities.

(iii) Direct the respondent no. 2 to refund the amount of Rs. 78,523/- charged from the complainants against the common area maintenance charges along with interest at the rate prescribed in the Act of 2016.

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 no. 1.

6. The respondent no. 1 has contested the complaint on the following grounds.

I. That the complainants had approached the answering respondent for booking a shop no. G034 in an upcoming project Ansal Hub Sector 83, Gurugram. Upon the satisfaction of the complainants regarding inspection of the site, title, location plans, etc. an agreement to sell dated 06.07.2011 was signed between the parties.

II. That the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the builder buyer agreement signed between the complainants and the answering respondent was in the year 2014. The regulations at the concerned time period would regulate the project and not a subsequent legislation i.e. RERA Act, 2016.

III. That the complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. The complainants cannot be allowed to take advantage of his own wrong.

IV. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2011 without coercion or any duress cannot be called in question today. The builder buyer agreement provides for a penalty in the event of a delay in giving possession. Clause 34 of the said agreement provides for Rs. 5/ sq. foot per month on super area for any delay in offering possession of the unit as mentioned in clause 30 of the agreement.

V. That the respondent no. 1 had in due course of time obtained all necessary approvals from the concerned authorities. The permit for environmental clearances for proposed group housing project for Sector 103, Gurugram, Haryana on 20.02.2015. Similarly, the approval for digging foundation and basement was obtained and sanctions from

the department of mines and geology were obtained in 2012. Thus, the respondent no. 1 had in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the complainants.

VI. That the respondent no. 1 ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process. Similarly, the complaint itself reveals that the correspondence from the answering respondent specifies force majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID -19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.

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

E. Exparte against respondent no. 2

8. The authority observes that the present complaint was filed on 18.01.2024. The counsel for the respondent no. 2 neither appeared nor filed the reply in the complaint. Despite specific directions, it failed to comply with the orders of the authority. It shows that the respondent no.2 was intentionally delaying the procedure of the court by avoiding to file written reply. Therefore, the authority assumes/ observes that it has nothing to say in the present matter and accordingly the authority proceeds with the case exparte against respondent no. 2.

F. Jurisdiction of the authority

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

F.I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

11. 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.*

12. 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.

G. Findings on the objections raised by respondent no. 1:

G.I Objection regarding jurisdiction of the complaint w.r.t the builder buyer agreement executed prior to coming into force of the Act.

13. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the builder buyer's agreement was executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.

14. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and would be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** decided on 06.12.2017 and which provides as under:

> *"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not*

contemplate rewriting of contract between the flat purchaser and the promoter...

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

15. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

16. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder

and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

G.II Objection regarding force majeure conditions:

17. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and demonetization. In the present matter the unit was allotted vide allotment letter dated 24.02.2014 and as per the possession clause 26 of the allotment letter the respondent-developer proposes to handover the possession of the allotted unit within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter. In the present case, the date of sanction of building plan is not available on records therefore, due date is calculated from the date of execution of allotment letter is 24.02.2014 so, the due date of subject unit comes out to be 24.02.2017. The events such as various orders by Punjab and Haryana High Court and demonetization were for a shorter duration of time and were not continuous as there is a delay of more than ten years. Even today no occupation certificate has been received by the respondent. Therefore, said plea of the respondent is null and void. As far as delay in construction due to outbreak of Covid-19 is concerned, the lockdown came into effect on 23.03.2020 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.

H. Entitlement of the Complainants:

(i) Direct the respondent no. 1 to pay interest for every month of delay @ 24% p.a. since 24.02.2017 as per provisions of clause 2 (za) and as per section 18(1) of Real Estate (regulation and Development) Act, 2016.

(ii) Direct the respondent no. 1 to complete the project in expeditious manner and offer the possession of the unit along with all promised amenities.

18. In the present matter, an allotment letter dated 24th February 2014 was executed between respondent no. 1 and the original allottee, Ms. Radhika Sundaram. The original allottee was granted unit no. G-034, with a total area of 322 square feet, for a total sale consideration of ₹30,90,073/-. Furthermore, on 17th June 2017, the original allottee, Ms. Radhika Sundaram, transferred all rights and obligations pertaining to the allotment to the complainants, Mr. Rajesh Sahay and Ms. Shobhana Sahay.

19. The complainants intends to continue with the project and are seeking delay possession charges at prescribed rate of interest on amount already paid by her as provided under the proviso to section 18(1) of the Act which 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. Clause 26 of the allotment letter dated 24.02.2014, provides for handing over possession and the same is reproduced below:

    *26. The Developer shall offer possession of the Unit anytime **within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter whichever is later**, subject to force-majeure circumstances such as act of God, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy labour equipment facilities material or supplies, failure of transportation, strike, lock outs, action of labour union, any dispute with any contractor / construction agency appointed by the Developer, change of law, or any notice, order, rule or notification issued by any Courts/Tribunals and/or Authorities, delay in the grant of part/ full completion (occupancy) certificate by the Government and / or any other public or competent authority or intervention of Statutory Authorities, or any other reason(s) beyond the control of the Developer. It is specifically being agreed between the Developer and the Allottee(s) that during the period Allottee(s) is to be paid monthly assured return, Allottee(s) will not seek possession from Developer and the Developer will not offer possession to the Allottee(s). The Allottee(s) shall not be entitled to any compensation on the grounds of delay in offering possession due to reasons beyond the control of the Developer."*

21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges in terms of proviso to section 18 of the Act which 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.*

22. 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.

23. 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., 24.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10% per annum.

24. 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;"*

25. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% p.a. by the

respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.

26. On consideration of the documents available on record and submissions made by the parties, the authority is satisfied that the respondent no. 1 is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the allotment letter executed between the parties. It is a matter of fact that allotment letter containing terms and conditions regarding the said unit was executed between the parties on 24.02.2014. As per the clause 26 of the allotment letter dated 24.02.2014, the possession of the booked unit was to be delivered within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter, which comes out to be 24.02.2017. Till date no occupation certificate has been obtained by the respondent/promoter. The authority is of the considered view that there is delay on the part of the respondent/promoter to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and to hand over the possession within the stipulated period.

27. In light of the aforementioned facts, the Authority is of the opinion that the complainants are subsequent allottee, having acquired the apartment from the original allottee on 17.06.2017, which is after the prescribed due date for possession. This indicates that the complainants were fully aware that the construction of the tower of the subject unit had not been completed, and that the occupancy certificate for that project had not yet been obtained. Notwithstanding this knowledge, the complainants voluntarily proceeded with purchasing of the subject unit, thereby implicitly accepting the delay in possession. Furthermore, the complainant's involvement only commenced on

17.06.2017, when the subject unit was officially transferred to them. Therefore, in the interest of fairness and natural justice, any entitlement to delayed possession charges may only be considered from the date of endorsement, i.e., 17.06.2017, which is the date on which the complainants stepped into the shoes of the original allottee.

28. The Authority further finds that there has been a delay on the part of the respondent/promoter in offering possession of the allotted unit to the complainants in accordance with the terms of the allotment letter dated 24.02.2014. This delay constitutes a failure on the part of the respondent/promoter to fulfill their contractual obligations, including the timely delivery of possession as stipulated in the agreement. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

29. 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/promoter is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the date on which the complainants stepped into the shoes of the original allottee (date of endorsement letter) i.e., 17.06.2017 till the offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

30. Further, it is observed by the Authority that respondent no.1 during proceeding dated 22.11.2024 has stated that it has offered fitout possession to the complainant as occupation certificate is not yet obtained and the occupation certificate is being applied shortly. The

Authority is of the view that the concept of valid offer of possession is to be understood first. A valid offer of possession must have following components:

i. ***Possession must be offered after obtaining occupation certificate;***

ii. *The subject unit should be in a habitable condition;*

iii. *The possession should not be accompanied by unreasonable additional demands.*

31. In the present matter, the respondent has offered the fit out possession of the allotted unit without obtaining occupation certificate. Thus, the offer of possession is not a valid offer of possession. Hence, the respondent/promoter is obligated to handover possession of the subject unit allotted to the complainants within a period of 60 days after obtaining valid occupation certificate.

(iii) Direct the respondent no. 2 to refund the amount of Rs. 78,523/- charged from the complainants against the common area maintenance charges along with interest at the rate prescribed in the Act of 2016.

32. The complainants have pleaded that respondent no. 2 i.e., Sems Estate Management Services Private Limited is charging an amount on account of common area maintenance charges i.e., ₹ 78,523/- and hereby seeking refund of the said amount. The authority is of the view that Section 11 (4) (d) of the Real Estate (Regulation and Development) Act, 2016 is relevant and reproduced herein below:

> *(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;*

33. The authority is of the considerate view that, as per Section 11 (4)(d) the promoter shall be responsible for providing and maintaining the

essential services, on reasonable charges till taking over of the project by the association of allottees. In the present matter, no occupation certificate has been received and no offer has been made till date so, the respondent no.1 is liable to pay for the same.

I. Directions of the authority

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

   I. The respondent no. 1 is directed to handover possession of the unit allotted to the complainants within a period of 60 days after obtaining valid occupation certificate.

   II. The respondent no. 1 is directed to pay the interest at the prescribed rate i.e. 11.10% per annum for every month of delay on the amount paid by the complainants from the date on which the complainants stepped into the shoes of the original allottee (date of endorsement letter) i.e., 17.06.2017 till the date of offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

   III. The respondent no. 1 is directed to pay arrears of interest accrued within 90 days from the date of this order as per rule 16(2) of the rules and thereafter monthly payment of interest be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.

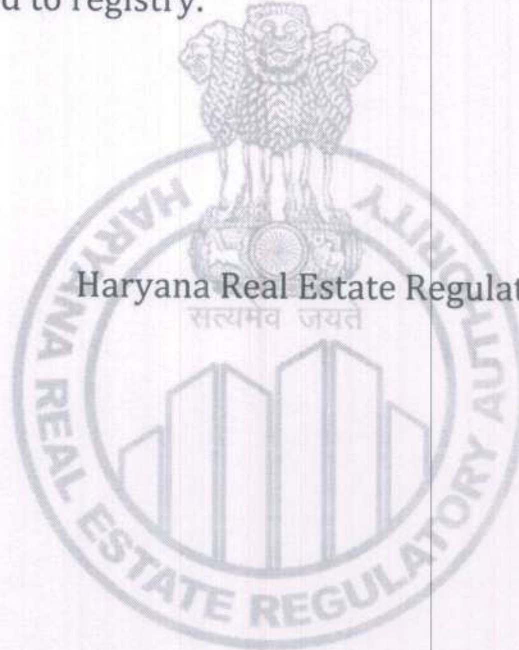
   IV. The rate of interest chargeable from the allottees by the promoter, in case of default shall be at the prescribed rate i.e., 11.10% by the

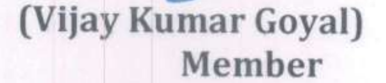
respondent/promoter, which is the same rate of interest which the promoter shall be liable to pay to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

V. The respondents shall not charge anything from the complainants, which is not the part of the buyer's agreement.

35. Complaint as well as applications, if any, stands disposed of accordingly.

36. File be consigned to registry.





(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.01.2025

HARERA
GURUGRAM