BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**7650 of 2022**
Date of filling of complaint:		**19.12.2022**
Date of decision	:	**22.11.2024**

1. Praful Dhar
2. Sheila Dhar
Both R/o. -109, Kamakshi Apartment, Plot no. 28, Sector-6, Dwarka, New Delhi-110075 **Complainants**

Versus

1. M/s VSR Infratech Pvt. Ltd.
Office: Plot No. 14, Ground Floor, Sector-44, Institutional Area, Gurugram-122003
2. M/s AMD Estates & Developers Pvt. Ltd.
Office: 18, Pusa Road, First Floor, Karol Bagh, New Delhi-110005 **Respondents**

CORAM:
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Shri. Gaurav Rawat (Advocate) **Complainants**
Ms. Shriya Takkar & Ms. Smriti Srivastava (Advocate) **Respondents**

ORDER

1. The present complaint dated 19.12.2022 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. No.	Particulars	Details
1.	Name of the project	"114 Avenue", Sector-114, Gurugram
2.	Project area	2.968 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	72 of 2011 dated 21.07.2011 valid up to 20.07.2024
5.	Name of licensee	AMB Estate and Developers Pvt Ltd
6.	RERA Registered	53 of 2019 dated 30.09.2019 valid up to 31.12.2019. ***Further extension granted up to 31.12.2020.*** ***Registration expired***
7.	Date of start of construction of building	01.01.2012 (as alleged by complainants)
8..	Date of Allotment Letter	30.05.2012 (Page 44 of complaint)
9.	Date of Space Buyer's Agreement	19.12.2013 (Page 75 of complaint)
10.	Unit No.	O/B-32, 4th floor (Page 44 of complaint)
11.	Unit area admeasuring	515.24 sq. ft. (as per allotment letter at page 44 of complaint)
		487.96 sq. ft. (as per agreement at page 77 of complaint)
		508.06 sq. ft. (as per offer of possession dated 01.03.2022 at page 222 of reply) **4% i.e. 20.97 sq. ft. increase**
12.	Possession clause	**30**. *"That the company shall give possession of the said unit within* ***36 months of signing of this Agreement or***

		within 36 months from the start of construction of the building whichever is later". (Page 86 of the complaint)
13.	Due date of possession	19.12.2016 (Calculated as per possession clause i.e., 36 months from date of execution of agreement being later)
14.	Total sale consideration	₹ 27,78,933/- (as per agreement at page 79 of complaint) ₹ 34,91,114/- (as per SOA dated 01.03.2022 annexed with offer of possession at page 109 of complaint)
15.	Amount paid by the complainants	₹ 22,08,962/- (as per SOA dated 01.03.2022 annexed with offer of possession at page 109 of complaint)
16.	Occupation certificate	17.02.2021 (Page 214 of the reply)
17.	Offer of Possession	01.03.2022 (Page 107 of the complaint)

B. Facts of the complaint

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

I. That the complainants relying on various representations and assurances given by the respondents booked a commercial unit bearing no. O/B-32, 4th floor, admeasuring 515.24 sq. ft. in the project of the respondents namely, 114 Avenue situated at Sector – 114, Gurugram by paying an amount of ₹ 2,60,000/- on 13.07.2011.

II. That the respondents sent allotment letter dated 30.05.2012 to the complainants. The space buyer's agreement was executed between complainants and respondents on 19.12.2013. As per clause 30 of the space

buyer's agreement the respondents had to deliver the possession within a period of 36 months from the date of signing of the agreement or the date of start of construction, whichever is later. The date of start of construction is 01.01.2012. Therefore, the due date of possession is calculated from the date of agreement i.e., 19.12.2013. Hence, the due date of possession comes out to be 19.12.2015.

III. That as per the demands raised by the respondents, based on the payment plan, the complainants had already paid a total sum of ₹ 22,08,962/- towards the said unit against the total sale consideration of ₹ 29,34,291/-. Though the payment to be made by the complainants was to be made based on the construction on the ground but unfortunately the demands being raised were not corresponding to the factual construction situation on ground.

IV. That during the period the complainants went to the office of respondents several times and requested them to allow them to visit the site but the same was never allowed.

V. That the complainants contacted the respondents on several occasions and were regularly in touch with the respondents. The respondents were never able to give any satisfactory response to the complainants regarding the status of the construction.

VI. That the complainants after many requests and emails; received the offer of possession on 01.03.2022. In the letter of offer of possession respondents raised several illegal demands on account of the following which are actually not payable as per the space buyer agreement advance monthly maintenance for 12 months of ₹ 73,161/-, electric connection charges of ₹ 38,104/-, air condition charges of ₹ 1,01612/-, IFMS of ₹ 76,210/-, administrative charges of ₹ 15,000/- , power back up of ₹ 71,129/- and GST

of ₹ 2,07,492/- which the buyer is not contractually bound to pay and the offer of possession cannot be considered to be a valid.

VII. That the respondents are asking for 18 months of advance maintenance charges amounting to ₹73,161/- from the complainants which is absolutely illegal and against the laws of the land. The responsibility for upkeep and maintenance of these areas is collective. The common area maintenance charges are calculated on monthly basis, based on actual charges and are then paid by the owners of the units to the maintenance agency or to the association which manages the complex where the units are situated. Hence, these are paid monthly once the expenses have been incurred and billed to the owner of the unit and therefore demanding an amount of ₹73,161/- as a deposit of annual common area maintenance charges along with the final payment is unjustified and illegal and therefore needs to be withdrawn immediately as the same is not payable by the complainants at all.

VIII. That the respondents asking for electric connection charges of ₹71,129/- from the complainants is absolutely illegal as the cost of the electric meter in the market is not more than ₹2,500/- hence asking for such a huge amount, when the same is not a part of the buyer agreement is unjustified and illegal.

IX. That the complainants has never delayed in making any payment and has always made the payment rather much before the construction linked plan attached to the BBA.

X. That the complainants sent various letters and emails to the respondents mentioning various deficiencies on the part of the respondents, requesting to obtain the OC, challenging the demand letter/offer of possession dated 01.03.2022 and raised various issues in relation to the said unit but till date has failed to provide any satisfactory response to the complainants.

XI. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondents in sale of their unit and the provisions allied to it. The modus operandi adopted by the respondents, from the respondents point of view may be unique and innovative but from the allottee point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time.

C. Relief sought by the complainants:

3. The complainants have sought following relief(s)

i. Direct the respondents to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay.

ii. Direct the respondents to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.

iii. Direct the respondents to pay the balance amount due to the complainants from the respondents on account of the interest.

iv. Direct the respondents not to force the complainants to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.

v. Direct the respondents to set aside demand letter dated 01.03.2022 on account of offer of possession.

vi. Direct the respondents to quash the illegal on account of delay interest charged @ 18% p.a. from the complainants.

vii. Direct the respondents to refund the amount collected on account of GST amounting to ₹ 2,07,492/-.

viii. Direct the respondents not to charge anything which not the part of the payment plan as agreed.

ix. Direct the respondents to provide the exact lay out plan of the said unit.

4. On the date of hearing, the authority explained to the respondents/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 and 2

5. The respondents have contested the complaint on the following grounds.

I. That the present complaint is not maintainable or tenable in the eyes of law as the complainants have approached this Authority with unclean hands and have not disclosed the true and material facts.

II. That the complainants, Mr. Praful Dhar and Mrs. Sheila Dhar are co-allottees of the unit bearing no. 4A-32 on the fourth floor in 114 Avenue, Sector – 114, Gurgaon, Haryana. The complainants had applied for allotment of a unit in "114 Avenue" to respondent no.2 i.e., AMD Estate & Developers Ltd. Accordingly, the complainants were allotted unit bearing no.4A-32 vide an allotment letter dated 30.05.2012. The price of the unit as per the allotment letter was ₹ 29,34,291/- plus taxes, IFMS and other charges. The space buyer's agreement for unit 4A-32 tentatively admeasuring 487.96 sq. ft. was executed between the complainants and the respondent no.2 herein on 19.12.2013. The complainants had opted for the construction linked payment plan and the respondent no.2 raised all the demands as per the payment plan opted. As per clause 30 of the space buyer's agreement dated 19.12.2013, the respondents were supposed to hand over the possession within a period of 36 months of signing of this agreement i.e. 19.12.2013 or within 36 months from the date of start of construction of the said building

i.e. in the year 2012 whichever is later and the possession date comes out to be 19.12.2016. However, the said timeline was subject to force majeure conditions.

III. That the substantial part of delay in delivery of the project happened as there was an encroachment by an individual namely Mukesh alias Mahesh on part of land on which the project was to be built. This encroachment came to the knowledge of the developer at the time when construction was to be started, after obtaining license, all the requisite sanctions, approval of building plan, etc. The aforesaid individual, Mukesh alias Mahesh filed a civil suit before the Gurgaon District Court and obtained a stay order upon the construction over the suit land in one corner of the project. The company could not start construction over the said suit land, to the extent that the project was re-visited and re-planned and the building plans had to be revised so as to exclude the encroached land as the litigation had become a prolonged one. Thus, in this process, the project was substantially delayed 9 for approximately 4 years) without there being any fault of the respondents.

IV. That the project in question was launched in the year 2010 and is right on the Dwarka expressway, which was supposed to be completed by the State of Haryana by the end of 2012. There being no approach road available it was initially not possible to make the heavy trucks carrying construction material to the project site and after a great difficulty and getting some kacha paths developed, materials could be supplied for the project to get completed which took a lot extra time. Even now the Government has not developed and completed the basic infrastructure, despite the fact that EDC/IDC were both deposited with the State Government on time. In this view of the circumstances as detailed above the respondents can by no means be expected to complete a project which does not even have an approach road to be constructed by the State. Thus, the respondents cannot be held

accountable for the delay in the project and State of Haryana and NHAI, are responsible, hence answerable for the delay in completing Dwarka expressway, which in turn has caused the delay of the present project. Thus, both State of Haryana and NHAI may be summoned by the Authority to answer the relevant questions which are the subject matter of the present complaint.

V. That the respondents are facing the labour problem for last 3 years continuously which slowed down the overall progress of the project and in case the respondents remain to face this problem in future, there is a probability of further delay of project.

VI. That the building plans were approved in January 2012 and company had timely applied for environment clearances to competent authorities. Despite of our best endeavor we only got environment clearance certificate on 28.05.2013 i.e., almost after a period of 17 month from the date of approval of building plans.

VII. That the Govt. on 8th Nov. 2016 declared demonetization which severely impacted the operations and project execution on the site as the labourers in absence of having bank accounts were only being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued and resulted in the labourers not accepting demonetized currency after demonetization.

VIII. That in July 2017 the Govt. of India further introduced a new regime of taxation under the Goods and Service Tax which further created chaos and confusion owning to lack of clarity in its implementation.

IX. That the other force majeure events including but not limited to non-availability of raw material due to various stay orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby stopping/regulating the mining activities, brick kilns, regulation of the

construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. In addition to above all the projects in Delhi NCR region are also affected by the blanket stay on construction every year during winters on account of AIR pollution which leads to further delay the projects. The stay orders are passed every year either by Hon'ble Supreme Court, NGT or/and other pollution boards, competent courts, Environment Pollution (Prevention & Control) Authority established under Bhure Lal Committee, which in turn affect the project.

X. That the Government of India declared nationwide lockdown due to COVID 19 Pandemic effective from 24th March, 2020 midnight. The construction and development of the project was affected due to this reason as well. This Authority has vide its order dated 26.05.2020 invoked the force majeure clause.

XI. That despite the force majeure conditions, the applicant/respondents completed the construction and thereafter applied for the occupancy certificate (OC) on 15.07.2020.

XII. That the OC has been received by the respondents on 17.02.2021. Further vide email dated 06.12.2021, respondent no.2 informed the complainants that the building is ready for possession and all the services are in running condition. It was also intimated to the complainants that the respondent no.2 shall soon be sending the final demand letter. The respondent no.2 vide letter dated 01.03.2022 offered possession to the complainants. As per offer of possession dated 01.03.2022, the respondent no.2 informed the complainants that the super area of the unit allotted to them is 508.06 sq. ft.

XIII. That all the demands raised by the respondent no.2 are as per the schedule of payment opted by the complainants. The complainants have failed to make

timely payments and therefore are a chronic defaulter and are liable to pay interest to the respondents for the delay in payment under section 19 (6).

XIV. That the complainants have raised an objection to certain charges levied by the respondent no.2 in the final demand letter dated 01.03.2022. The advance maintenance charges, electric connection charges, air conditioning charges, IFMS, administrative charges power backup charges and GST are all duly covered under the space buyer's agreement and the respondents have not acted beyond the scope of the said agreement.

XV. That the complainants are not genuine consumer and an end user since they have booked the unit in question purely for commercial purpose as a speculative investor and to make profits and gains.

XVI. All other averments made in the complaint are denied in toto.

XVII. 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. Jurisdiction of the authority

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

E.I Territorial jurisdiction

7. 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.

E.II Subject-matter jurisdiction

8. 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.*

9. 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 the objections raised by respondents

F.I Objection regarding force majeure conditions:

10. The respondents-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, NGT and Environment Pollution (Prevention & Control) Authority, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and demonetization but all the pleas advanced in this regard are devoid of merit. The authority has gone through the possession clause and observed that the respondents-developer proposes to handover the possession of the allotted unit within a period of 36 months from the date of signing of agreement or within 36 months from the start of construction of the building whichever is later. The date of start of

construction is 01.01.2012 and the date of execution of space buyer's agreement is 19.12.2013. Therefore, due date is calculated from the date of execution of space buyer's agreement i.e., 19.12.2013 so, the due date of subject unit comes out to be 19.12.2016. The respondents were liable to complete the construction of the project and the possession of the said unit was to be handed over by 19.12.2016. The events such as demonetization and various orders passed by Hon'ble High Court of Punjab and Haryana, NGT and Environment Pollution (Prevention & Control) Authority, were for a shorter duration of time and were not continuous as there is a delay of more than five years. Hence, in view of aforesaid circumstances, no grace period on such grounds can be allowed to the respondent- promoter. 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.

F.II Objection regarding the complainants being investor:

11. The respondents has taken a stand that the complainants are the investor and not consumer, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondents also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector. The authority observed that the respondents are correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble

cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

> *"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

12. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainants:

G.I Direct the respondents to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay.

G.II Direct the respondents to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.

G.III. Direct the respondents to pay the balance amount due to the complainants from the respondents on account of the interest as per

the guidelines laid in the RERA, 2016, before signing the conveyance deed/ sale deed.

13. The above mentioned relief no. G I, G II and GIII are interrelated to each other. Accordingly, the same are being taken up together for adjudication.

14. The complainants in the present matter have entered into a booking agreement for a flat identified as no. O/B – 32, located on the 4th floor, with a total area of 515.24 sq. ft., in the respondent's project titled as "114 Avenue," situated at Sector-114, Gurugram, for total sale consideration of ₹27,78,933/-. The allotment of the aforementioned unit was made on 30.05.2012 and the space buyer agreement was executed between the complainants and the respondents on 19.12.2013. It is further noted that the unit area was specified as 487.96 sq. ft. in the space buyer agreement.

15. The complainants intends to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

> *"**Section 18: - Return of amount and compensation***
>
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
>
> .....
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

16. Clause 30 of the space buyer's agreement provides the time period of handing over possession and the same is reproduced below:

> 30. "That the company shall give possession of the said unit **within 36 months of signing of this Agreement or within 36 months from the start of construction of the building whichever is later.**"

17. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate of interest on the amount already paid by him. 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.*

18. 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.

19. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 22.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

20. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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—*
> *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 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;"

21. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondents/promoters which the same is as is being granted to the complainants in case of delayed possession charges.

22. On consideration of the documents available on record and submissions made by the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondents-promoter 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 30 of the space buyer's agreement executed between the parties, the possession of the subject unit was to be delivered within a period of 36 months from the date of signing of agreement or within 36 months from the start of construction of the building whichever is later. The date of start of construction is 01.01.2012 and the date of execution of space buyer's agreement is 19.12.2013. Therefore, due date is calculated from the date of execution of space buyer's agreement i.e., 19.12.2013 so, the due date of subject unit comes out to be 19.12.2016. The occupation certificate for the project where the subject unit of the allottee is situated was received on 17.02.2021. Subsequently, unit was offered for possession on 01.03.2022.

23. The Authority further finds that there has been a delay on the part of the respondents/promoter in offering possession of the allotted unit to the complainants in accordance with the terms of the space buyer's agreement dated 19.12.2013. This delay constitutes a failure on the part of the respondents/promoter to fulfill their contractual obligations, including the timely delivery of possession as stipulated in the agreement. Accordingly, it is the failure of the respondents/promoter to fulfil its obligations and

responsibilities as per the agreement to hand over the possession within the stipulated period.

24. 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 respondents/promoter is established. As such, the complainants/allottees shall be paid by the respondents/promoter interest for every month of delay from the due date of possession i.e., 19.12.2016 till the date of valid offer of possession (01.03.2022) plus 2 months i.e., 01.05.2022 (*In proceeding dated 22.11.2024, inadvertently DPC was allowed till offer of possession or actual handover of unit, whichever is earlier and the same is hereby rectified)* after obtaining occupation certificate from the competent authority at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.IV Direct the respondents not to force the complainants to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.

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

G.V Direct the respondents to set aside demand letter dated 01.03.2022 on account of offer of possession.

26. The complainants have stated that as per letter of offer of possession dated 01.03.2022, the respondents are charging various illegal charges such as the BSP due, EDC/IDC, electric connection charges, power backup charges, air conditioning charges, administrative charges, advance maintenance charges for 12 months.

27. The authority observes that the respondents has issued an offer of possession dated 01.03.2022 which is annexed at page 107 of complaint. The respondents

while issuing the said offer of possession has raised several demands such as increase in basic sale price as the area of the allotted unit has been increased. Furthermore, it has raise a demand regarding EDC/IDC, electric connection charges, power backup charges, air conditioning charges, administrative charges, advance maintenance charges for 12 months. All the demands are dealt accordingly below:

- **Increase in basic sale price due to increase in area of the unit.**

28. It is pleaded on behalf of complainants that there is no basis to demand charges against increase in area of the unit. The authority is of the view that the space buyer's agreement between the parties was executed on 19.12.2013. As per space buyer's agreement dated 19.12.2013 the area allotted to the complainants was 487.96 sq. ft. and as per offer of possession dated 01.03.2022 the area of the said unit was mentioned as 508.06 sq. ft. Thereby, respondents are increasing the area of the subject unit by 21 sq. ft. i.e. 4%. As per clause 27, provides with regard to major alteration/modification resulting in more than 10% change in the super area of the said unit or material change in the specifications of the said unit any time prior to and upon the grant of occupation certificate, the Company/Confirming Party shall intimate to the Allottee in writing the changes thereof. A reference to clause 27 of the agreement must detail as under:

> *"That the Allottee has seen and inspected the site and also accepted the plans, designs, specifications which are tentative and the allottee authorizes the Company/ Confirming Party to effect suitable and necessary alterations/modifications in the layout plan/building plans, designs and specifications as the Company/Confirming Party may deem fit or as directed by any competent authority(ies). However,* ***in case of any major alteration/modification resulting in more than 10% change in the Super Area of the Said Unit or material change in the specifications of the Said Unit any time prior to and upon the grant of occupation certificate, the Company/Confirming Party shall intimate to the allottee in writing the changes thereof and the resultant change, if any, in the price of the Said Unit to be paid by***

him/her*/it and the Allottee agrees to inform the Company in writing his/her/its consent or objections to the changes within 15 days (fifteen) days from the date of such notice failing which the Allottee shall be deemed to have given his/her/its consent to all the alterations/modifications. If the Allottee writes to the Company within 15 (fifteen) days of intimation by the Company/Confirming Party indicating his/her/its non-consent/objections to such alterations/modifications resulting in more than 10% change in Super Area, then the allotment shall be deemed to be cancelled and the Company shall refund the entire money received from the Allottee with the simple interest @12% per annum. The Allottee agrees that any increase or reduction in the Super Area of the Unit (s) shall be payable or refundable (without any interest) at the rate per sq. mtr. As mentioned in this application."*

29. Considering the above-mentioned facts, the authority observes that the respondents have increased the super area of the unit from 487.96 sq. ft. to 508.06 sq. ft. vide offer of possession dated 01.03.2022 thereby increasing the area of the subject unit by 21 sq. ft. i.e. 4%. In view of the above, the Authority has clear observation that as per clause 27 of the space buyer's agreement dated 19.12.2013 if there is any major alteration/modification resulting in more than 10% or material change in the specifications of the said unit any time prior to and upon the grant of occupation certificate, the Company/Confirming Party shall intimate to the Allottee in writing. Moreover, clause 5 is also relevant which is mentioned hereunder:

That the total price is escalation free, save and except ***increases which the Allottee hereby agrees to pay, due to increase in Super Area, Increase in External Development Charges (EDC), Infrastructure Development Charges (IDC),*** *increase on account of additional fire safety measures undertaken, increases in all types of securities to be paid by the Allottee, deposits and charges increases thereof for bulk supply of electrical energy and all other increases in costs/charges specifically provided for in this Agreement and/or any other levies, cesses, taxes or enhancements which may be levied or imposed by the Government/statutory authorities from time to time or as stated in this Agreement.*

30. As per the clause 5 of the agreement dated 19.12.2013 the allottee had agreed to pay amount due for increase in super area. Hence, the complainants/allottee are liable to pay for the same.

- **EDC/IDC**

31. The complainants has pleaded that the respondents while issuing offer of possession dated 01.03.2022 has charged an amount on account of EDC and IDC which should be declared as null and void. The authority observes that the buyer's agreement dated 19.12.2013 was executed interse parties and clause 1 (c), Clause 2 (b), Clause 3 and clause 5 of the agreement is relevant and reproduced hereunder for ready reference:

1 (c) The pro rata share of EDC and IDC as levied by the Government of Haryana and upto the date of issue of licences and originally paid/to be paid by the Company/confirming Party in terms of LOI/License as applicable to the Said Unit.

2 (b) Increase in EDC and IDC by the state government after the date of grant of license.

3. EDC/IDC (per sq. ft.)	*470sq. ft.*	*2,29,342/-*

5. That the total price is escalation free, save and except ***increases which the Allottee hereby agrees to pay, due to increase in Super Area, Increase in External Development Charges (EDC), Infrastructure Development Charges (IDC),*** *increase on account of additional fire safety measures undertaken, increases in all types of securities to be paid by the Allottee, deposits and charges increases thereof for bulk supply of electrical energy and all other increases in costs/charges specifically provided for in this Agreement and/or any other levies, cesses, taxes or enhancements which may be levied or imposed by the Government/statutory authorities from time to time or as stated in this Agreement*

32. The authority is of the view that as per the above mentioned clauses of the agreement dated 19.12.2013 the allottee had agreed to pay amount due for EDC and IDC. Hence, the complainants/allottee are liable to pay for the same.

- **Power Backup Charges and Air Conditioning Charges**

33. The complainants have pleaded that the respondents while issuing offer of possession dated 01.03.2022 has charged an amount on account of power backup charges and air conditioning charges. The authority observes that clause 2(f) and clause 7 (c) of the buyer's agreement dated 19.12.2013 is relevant and is reproduced hereunder for ready reference:

> *2(f) Power back up charges*
>
> 7 (c) *The rate mentioned in this agreement is for bare shell condition of the office/retail space(s) areas. The common areas shall also be delivered in finished condition by the Confirming party at no extra cost. However,* ***power back up and air conditioning charges shall be required to paid at extra****. The specification is as per Annexure VI.*

34. The authority is of the view that as per the above mentioned clauses of the agreement dated 19.12.2013 the complainants/ allottees are liable to pay for the power backup charges and air conditioning charges.

- **Electric Connection Charges, Advance Maintenance Charges**

35. The complainants have pleaded that the respondents while issuing offer of possession dated 01.03.2022 has charged an amount on account of electric connection charges, advance maintenance charges. The authority observes that the buyer's agreement was executed between the parties on 19.12.2013 and clause 2 of the said agreement mentions about all such charges. The said clause is reproduced hereunder for ready reference:

> *2. The Total Price does not include the following:*
> *a) All taxes and cesses and other levies payable as per the terms of this Agreement, including but not limited to Service Tax.*
> *b) Increase in EDC and IDC by the state government after the date of grant of license.*
> ***c) All other types of securities/Taxes/Charges including IFMS, Maintenance Charges, property taxes etc.***
> *d) Increase in Price due to increase in Super Area of the Said Unit, stamp duty, registration and any incidental charges and any other charges payable as stated in this Agreement.*
> ***e) Electric connection charges and meter charges****. The amount payable on this account will depend on the estimates approved by*

DHBVN for service connection/ substation equipment's, costs of area and security deposit etc.
f) Power Back up charges
g) Air Conditioning cost.

36. Hence, as per the clause 2 of space buyer's agreement dated 19.12.2013 the complainants/ allottees are liable to pay for the electric connection charges and advance maintenance charges on actual and proportionate basis as paid to concerned power utility department. The respondent to furnish required details and documentary proof of its payment to concerned department.

- **Administrative charges**

37. The complainants have pleaded that the respondents while issuing offer of possession dated 01.03.2022 has charged an amount on account administrative charges. The authority is of the view that the respondents/promoter can charge administrative charges of Rs.15000/- 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 vide circular dated 02.04.2018.

- **IFMS**

38. The complainants has pleaded that the respondents while issuing offer of possession dated 01.03.2022 has charged an amount on account IFMS. The authority is of the view that clause 2 (c) and clause 38 (b) is relevant. The said clause is reproduced hereunder for ready reference:

2 (c) All other types of securities /Taxes/Charges including IFMS, Maintenance Charges, property taxes etc.

38 (b) The allottee shall also deposit with the Company/Confirming Party a sum of Rs. 150/- per sq. ft. by way of interest Free Maintenance Security (IFMS) and in case of service apartment the sinking fund/capital replacement fund/working capital fund will be decided as per recommendation of service apartment operator.

39. The authority is of the view that as per the above mentioned clauses of the agreement dated 19.12.2013 the complainants/ allottees are liable to pay for the IFMS.

G.VI Direct the respondents to quash the illegal on account of delay interest charged @ 18% p.a. from the complainants.

40. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondents/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act. In view of the same, the demand of interest on delayed payment @18% p.a. from the complainants is illegal and hence quashed.

G.VII Direct the respondents to refund the amount collected on account of GST amounting to ₹ 2,07,492/-.

41. The counsel for the complainants submitted that GST came into force on 01.07.2017 and the possession was supposed to be delivered by 19.12.2016. Therefore, the tax which came into existence after the due date of possession and this extra cost should not be levied on the complainants. The authority has decided this issue in the complaint bearing no. ***4031 of 2019*** titled as ***Varun Gupta V/s Emaar MGF Land Ltd.*** wherein the authority has held that for the projects where the due date of possession was prior to 01.07.2017 (date of coming into force of GST), the respondents/promoter are not entitled to charge any amount towards GST from the complainants/allottee as the liability of that charge had not become due up to the due date of possession as per the buyer's agreements.

42. In the present complaint, the possession of the subject unit was required to be delivered by 19.12.2016 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainants cannot be burdened to discharge a liability which had accrued solely due to respondents' own fault in delivering timely possession of the subject unit. So, the respondents/promoter are liable to bear the difference of government taxes levied upon after the due

date of possession till the date of offer of possession and the promoter is only entitled to charge taxes fixed by the government effective only upto the due date of possession. Therefore, difference between post GST and pre-GST shall be borne by the promoter.

G.VIII Direct the respondents not to charge anything which not the part of the payment plan as agreed.

43. The respondents directed not to charge anything which is not part of space buyer's agreement.

G.IX Direct the respondents to provide the exact lay out plan of the said unit.

44. The authority is of the view that as per section 19(1) of Act of 2016, the allottee shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondent's promoter are directed to provide the exact layout plan of the said unit to the complainants.

H. Directions of the authority

45. 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):

    a. The respondents are directed to pay interest at the prescribed rate of 11.10% p.a. on the amount paid by the complainants for every month of delay, from the due date of possession i.e., 19.12.2016 till the date of valid offer of possession (01.03.2022) plus 2 months i.e., 01.05.2022 after obtaining occupation certificate from the competent authority as per proviso to section 18(1) of the Act read with rule 15 of the rules.

b. The arrears of such interest accrued from due date of possession till 01.05.2022 shall be paid by the promoter to the allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.

c. The respondents are directed to issue a revised statement of account after adjustment of delayed possession charges within a period of 30 days from the date of this order. The complainants are directed to pay outstanding dues, if any remains, after adjustment of delay possession charges and thereafter the respondents shall handover the possession of the allotted unit within next 30 days.

d. The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondents/promoters which is the same rate of interest which the promoters would be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

e. The respondents shall not to charge anything which is not part of buyer's agreement.

f. The amount if any already paid by the respondents to the complainants shall be adjusted.

46. Complaint stands disposed of.

47. File be consigned to registry.

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.11.2024