

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

Complaint no.: 4314 of 2024
Date of filing of complaint: 29.08.2024
Date of first hearing: 18.09.2024
Order pronounced on: 23.04.2025

Rita

Resident of: House no. 199/26, Jawahar Nagar,
Opposite Bajrang Bhawan, Rohtak, Haryana-
124001

Complainant

Versus

M/s Sunrays Heights Pvt. Ltd.
Registered office: 211, Ansal, 16 Kasturba
Gandhi Marg, New Delhi-110001

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Mr. Gaurav Rawat (Advocate)
Mr. Harsh Jain (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made thereunder or to the allottee 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Sixty-Three Golf Drive", Sector 63A Gurugram
2.	Nature of the project	Affordable group housing
3.	RERA registered or not registered	249 of 2017 dated 26.09.2017 valid up to 25.09.2022
4.	DTCP license	82 of 2014 dated 08.08.2014 valid up to 31.12.2023
5.	Unit no.	C-36, Tower C (page 56 of complaint)
6.	Unit admeasuring	604.83 sq. ft. (carpet area) 95.1(balcony area) (page 56 of complaint)
7.	Provisional Allotment letter	11.01.2016 (page 25 of complaint)
8.	Date of execution of Buyers agreement	13.04.2017 (Stamp paper date at page 42 of complaint)
9.	Possession clause	<p>4. POSSESSION</p> <p>"4.1 The developer shall endeavour to handover possession of the said flat within a period of four years i.e., 48 months from the date of commencement of the project, subject to force majeure and timely payment by the allottee towards the sale consideration, in accordance with the terms stipulated in the present agreement."</p> <p>(page 46 of complaint)</p> <p>*As per Affordable Housing Policy 2013</p> <p>1(iv) All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licence shall not be renewed beyond the said 4 years from the date of commencement of project.</p>

10.	Date of building plan	10.03.2015 (Page 47 of reply)
11.	Date of environment clearance	16.09.2016 (Page 53 of reply)
12.	Due date of possession	16.03.2021 (16.09.2020 plus six months in lieu of covid-19) (calculated from the date of environment clearance)
13.	Total sale consideration	Rs. 24,66,870/- (page 56 of complaint)
14.	Amount paid by the complainant	Rs. 22,49,921/- (As per Payment detail report dated 26.06.2024 at page 69 of reply)
15.	Final Reminder to clear outstanding dues of Rs.8,03,917/-	26.06.2024 (Page 66 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- That in 2015, the respondent issued an advertisement announcing an Affordable Housing Project called "36 Golf Drive" in a land parcel admeasuring a total area of approximately on the 5.9 acres of land, under the license no. 82 of 2014 dated 08.08.2014, issued by DTCP, Haryana, Chandigarh, situated at Sector 63A, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of unit in the said project. The respondent confirmed that the projects had got building plan approval from the authority.
- That relying on various representations and assurances given by the respondent and on belief of such assurances, the complainant booked a unit in the project by paying an booking amount towards the booking of the said unit bearing no. C36, tower-B, in Sector 63A, Gurugram having carpet area measuring 604.83 sq. ft. and balcony area 95.10 sq. ft. to the respondent dated 08.03.2015 and the same was acknowledged by the respondent.
- That the respondent confirm the booking of the unit to the complainant vide provisional allotment letter dated 11.01.2016, providing the details of the project, confirming the booking of the unit dated 08.03.2015, allotting a unit no.

C36, tower-B, (measuring carpet area measuring 604.83 sq. ft. and balcony area 95.10 sq. ft. in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs.24,66,870.00 which includes basic price, car parking charges, and development charges, PLC, IFMS, IBRF, club membership charges and other specifications of the allotted unit and providing the time frame within which the next instalments was to be paid. Thereafter, respondents sent allotment letter dated 27.06.2017 to complainant providing the details of the said unit.

- d) That a buyer's agreement was executed between the parties on 13.04.2017. The allotment of the unit and agreement has been executed after coming into force of the RERA Act,2016 but respondent failed to fulfil and abide by the provisions of the RERA Act,2016, as the buyer agreement executed has been registered and even it is not as per standard format provided under the Act. Hence, penal action to be initiated against the respondent.
- e) That as per clause 4 of the buyer's agreement the respondent shall endeavour to handover possession of the sold flat within of period of 4 years i.e., 48 months from the date of commencement of project, subject to force majeure and timely payment by the allottee, towards the sale consideration, in accordance with the terms as stipulated in the present agreement. Therefore, due date of possession comes out to be 29.03.2021. The due date is calculated from date of environment clearance i.e. 29.09.2016.
- f) That as per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs. 22,49,690/- towards the said unit against total sale consideration of Rs. 24,66,870/-.
- g) That the complainant went to the office of respondent several times and requested them to allow them to visit the site but it was never allowed saying that they do not permit any buyer to visit the site during construction period,

once complainant visited the site but was not allowed to enter the site. The complainant even after paying amounts still received nothing in return but only loss of the time and money invested by them.

- h) That the complainant kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labour etc.
- i) That the respondent not only failed to adhere to the terms and conditions of booking but also illegally extracted money from the complainant by making false promises and statements at the time of booking. The respondent is unable to handover a possession even after a delay of many years.
- j) That the complainant after losing all the hope from the respondent, having their dreams shattered and having basic necessary facilities in the vicinity of 63 Golf Drive Project and also losing considerable amount, are constrained to approach this Authority for redressal of their grievance.

C. Relief sought by the complainant:

- 4. The complainant has sought following relief(s):
 - I. Direct the respondent to pay delay possession charges from due date of possession till handing over the possession before executing the conveyance deed.
 - II. Direct the respondent handover the possession of the unit.
 - III. Direct the respondent to provide committed date of completion of the unit.
 - IV. Restrain the respondent from raising any fresh demand for payment under any head which is not part of the payment plan as agreed at the time of booking.
 - V. Direct the respondent to get the conveyance deed executed.
 - VI. Order the respondent not to force the complainant to sign any indemnity-cum-undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.
 - VII. Direct the respondent to provide an exact layout plan of the said unit.

VIII. Direct the respondent not to ask for monthly maintenance charges for a period of 12 months or before giving actual possession of unit complete in all aspects.

IX. Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like IFMS, fixed deposit towards HVAT, which in any case is not payable by the complainant.

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

D. Reply by the respondent:

6. The respondent contested the complaint on the following grounds:

- a) That as per Rule 28(1) (a) of RERA Rules, a complaint under section 31 of RERA Act can be filed for any alleged violation or contravention of the provisions of the RERA Act after such violation and/or contravention has been established after an enquiry made by the Authority under Section 35 of RERA Act. In the present case no violation and/or contravention has been established by the Authority under Section 35 of RERA Act and as such the complaint is liable to be dismissed
- b) That the operation of Section 18 is not retrospective in nature and the same cannot be applied to the transactions that were entered prior to the RERA Act came into force. In the present case also, the booking was executed much prior to the date when the RERA Act came into force and as such section 18 of the RERA Act cannot be made applicable to the present case.
- c) That the respondent's promise to complete the construction within the period given in the said clause was dependent upon timely payment of the instalments by the complainant. Since the complainant failed to make payment as per the agreed payment schedule the respondent was under no obligation to complete the construction within the given period. As such the complainant cannot be allowed to seek interest and/or compensation or to rescind the contract and seek refund of the amount on the ground that the construction was not

completed within the given period. The respondent relies upon Section 53 and Section 54 of the Indian Contract Act 1872 in this regard.

- d) That the complainant has no locus standi to file the present complaint. The complainant has failed to produce any registration certificate or memorandum of its objects. Thus, the complainant cannot be given a legal status in the absence of such documents and therefore is not entitled to file and prosecute the instant proceedings.
- e) That the complainant out of their own free will and volition chose not to make payment in terms of the agreed schedule of payments as a result of which the respondent was constrained to cancel the allotment made in favour of the complainant. The respondent sent two copies of the buyer's agreement to the complainant. However, for the reasons best known to the complainant even after repeated reminders and follow-ups being sent to the complainant, the complainant did not act further and executed the buyer's agreement.
- f) That the Courts cannot travel beyond what is provided in the agreement/contract and generate altogether a new contract; the responsibility of the Court is to interpret appropriately the existing contract and decide the rights and liabilities of the parties within the four corners of the contract.
- g) That the complainant is chronic defaulters in making payment on time contrary to the agreed terms. On many occasions repeated demand letters and reminders were issued to the complainant for payment and consequently the allotment made in favour of the complainant was cancelled by the respondent. Even after repeated demands complainant were not ready to make the payment.
- h) That the Hon'ble Supreme Court of India further In the case of "Gannmani Anasuya and Others v. Parvatini Amarendra Chowdhary and Others, (2007) 10 SCC 296", has highlighted with reference to Section 3 of the Limitation Act that it is for the Court to determine the question as to whether the suit is barred by

limitation or not irrespective of the fact that as to whether such a plea has been raised by the parties; such a jurisdictional fact need not be even pleaded.

- i) That, the building plan of the project was approved on 10.03.2015 from DGTCP and the environment clearance of the project was received on 16.09.2016. Thus, the proposed due date of possession, as calculated from the date of EC, comes out to be 21.08.2021. The Authority vide notification no.9/3-2020 dated 26.05.2020 had allowed an extension of 6 months for the completion of the project the due of which expired on or after 25.03.2020, on account of unprecedented conditions due to outbreak of Covid-19. Hence, the proposed due date of possession comes out to be 16.03.2021.
- j) That, however, the offer of possession was also subject to the incidence of force majeure circumstances under clause 16 of the agreement. The construction and development of the project was deeply affected by such circumstances which are beyond the control of the respondent.
- k) That the respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby 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. These orders in fact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court of Punjab & Haryana and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost for 2 (Two) years that the scarcity as detailed aforesaid continued, despite which, all efforts were made, and materials were procured at 3-4 times the rate and the construction of the project continued without shifting any

extra burden to the customer. It is to be noted that the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts.

- l) That the covid-19 pandemic resulted in serious challenges to the project with no available laborers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated 24.03.2020, bearing no. 40-3/2020-DM-I (A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on 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 various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, and stopping all construction activities. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop., etc.
- m) That despite the default caused, as a gesture of goodwill, with good intent the respondent got sanctioned loan from SWAMIH fund of Rs. 44.30 Crores to complete the project and has already invested Rs. 35 Crores from the said loan amount towards the project. That further the respondent has already received the FIRE NOC, LIFT NOC, the sanction letter for water connection and electrical inspection report.
- n) That the respondent has applied for occupation certificate on 08.12.2023. Once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent

cannot exercise any influence. Therefore, the time period utilized by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.

- o) That the complainant has been allotted unit under the Affordable Housing Policy, 2013 which clearly stipulated the payment of consideration of the unit in six equal installments. The complainant is liable to make the payment of the installments as per the government policy under which the unit is allotted. That at the time of application the complainant was aware about the duty to make timely payment of the installments.
- p) That the complainant has failed to make any payment of the installment at "within 36 months from the due date of Allotment" due on April 2019 along with partial payments towards previous installments. The non-payment by the complainant affected the construction of the project and funds of the respondent. Due to default of the complainant, the respondent had to take loan to complete the project and is bearing the interest on such amount.
- q) That in light of the bona fide conduct of the respondent and no delay for development of project as the respondent was severely affected by the force majeure circumstances and no cause of action to file the present complaint this complaint is bound be dismissed in favor of the respondent.

E. Jurisdiction of the authority

7. 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

- 8. 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. 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

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

"Section 11....

(4) 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."

10. So, in view of the said provisions of the Act, 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.I Objection regarding force majeure conditions:

11. It is contended on behalf of respondent/builder that due to various circumstances beyond its control, it could not speed up the construction of the project, resulting in its delay such as various orders passed by NGT Hon'ble Supreme Court. All the pleas advanced in this regard are devoid of merit. The passing of various orders to control pollution in the NCR-region during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other Authorities cannot be taken as an excuse for delay as it is a well-settled principle that a person cannot take benefit of his own wrong.

12. It is observed that the respondent was liable to complete the construction of the project, and the possession of the said unit was to be handed over by 16.09.2020 and is claiming benefit of lockdown amid covid-19. In view of notification no. 9/3-2020 dated 26.05.2020, the Authority has allowed six months relaxation due to covid-19 and thus with same relaxation, even if due date for this project is considered as 16.09.2020 + 6 months, possession was to be handed over by 16.03.2021, but the respondent has failed to handover possession even within this extended period. Moreover, the occupation certificate is not yet obtained by the respondent from competent Authority.

G. Findings on the relief sought by the complainant.

- G.I Direct the respondent to pay delay possession charges from due date of possession till handing over the possession before executing the conveyance deed.**
- G.II Direct the respondent handover the possession of the unit.**
- G.III Direct the respondent to provide committed date of completion of the unit.**
- G.IV Restrain the respondent from raising any fresh demand for payment under any head which is not part of the payment plan as agreed at the time of booking.**

13. 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.

14. The factual matrix of the case reveals that the complainant booked a unit in the affordable group housing colony project of the respondent known as "Sixty-Three Golf Drive" situated at sector 63-A, District- Gurgaon, Haryana and was allotted unit no. 36, in tower C for a sale consideration of Rs. 2,66,870/-. The builder buyer agreement was executed between the parties on 13.04.2017. The possession of the unit was to be offered with 4 years from approval of building plans (10.03.2015) or from the date of environment clearance (16.09.2016), whichever is later which comes out to be 16.09.2020. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or

after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 16.09.2020 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. Therefore, the due date of handing over possession comes out to be 16.03.2021.

15. In the present complaint, 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. Section 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 4 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

"4-Possession

*4.1 The Developer shall endeavour to handover possession of the said flat **within a period of four years i.e. 48 months from the date of commencement of project**, subject to force majeure & timely payments by the allottee towards the sale consideration, in accordance with the terms as stipulated in the present agreement."*

- 17. Admissibility of delay possession charges at prescribed rate of interest:**

The complainant is seeking delay possession charges till delivery of possession. 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, *ibid*. 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, *ibid*, 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., 23.04.2025 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(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

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21. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
22. On consideration of the documents available on record and submissions made regarding contravention of 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 4.1 of the buyer's agreement, the possession of the subject apartment was to be delivered within 4 years from the date of commencement of project (as per clause 1(iv) of Affordable Housing Policy, 2013, all such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy). In the present case, the date of approval of building plans is 10.03.2015, and the date of environment clearance is 16.09.2016. The due date of handing over of possession is reckoned from the date of environment clearance being later. Therefore, the due date of handing over of possession comes out to be 16.09.2020. Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 16.09.2020 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19. As such the due date for handing over of possession comes out to be 16.03.2021.

23. It is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period. 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 delay possession charges at rate of the prescribed interest @ 11.10% p.a. w.e.f. 16.03.2021 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent Authority or actual handover, whichever is earlier as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

24. It is pertinent to note that the rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% 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(z) of the Act.

25. Also, as per Section 17(1) of the Act of 2016, the respondent is obligated to handover physical possession of the subject unit to the complainant. Occupation certificate has also been obtained by the respondent-promoter on 31.12.2024. Therefore, the respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement entered into between the parties within a period of 30 days.

G.V Direct the respondent to get the conveyance deed executed.

26. As per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favor of the complainants. Whereas as per Section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. Section 17(1) of the Act is reproduced below for ready reference:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in

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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.***

27. The respondent/promoter is under an obligation as per Section 17 of Act to get the conveyance deed executed in favour of the complainants. Since the occupation certificate for the project had already been received on 31.12.2024, the respondent is directed to execute the conveyance deed in favour of complainant within 60 days upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government in terms of Section 17 of the Act, failing which the complainant may approach the adjudicating officer for execution of order.

G.VI Order the respondent not to force the complainant to sign any indemnity-cum-undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.

28. The respondent cannot place any condition or ask the complainant 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 versus Emaar MGF Land Ltd.**"

G.VII Direct the respondent to provide an exact layout plan of the said unit.

29. As per Section 19(1) of the Act, the allottee is entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in this Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Therefore, in view of the same, the respondent is directed to provide details i.e., exact layout plan of the allotted unit in question to the complainant within a period of 1 month from the date of this order.

G.VIII Direct the respondent not to ask for monthly maintenance charges for a period of 12 months or before giving actual possession of unit complete in all aspects.

G.IX Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like IFMS, fixed deposit towards HVAT, which in any case is not payable by the complainant.

30. Clause 4(v) of the Affordable Housing Policy, 2013 talks about maintenance of colony after completion of project:

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.

31. The issue of maintenance charges has already been clarified by the office of DTCP, Haryana vide clarification no. PF-27A/2024 /3676 dated 31.01.2024 wherein it has categorically clarified the mandatory services to be provided by the colonizer/developer in Affordable Group Housing Colonies and services for which maintenance charges can be charged from the allottees as per consumption. Accordingly, the promoter can only charge maintenance/use/utility charges from the complainant-allottee as per consumption as prescribed in Category-II of the office order dated 31.01.2024.

32. Further, the respondent shall not charge anything from the complainant which is not part of the buyer's agreement and under the Affordable Housing Policy, 2013.

H. Directions of the Authority

33. 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 function entrusted to the authority u/s 34(f):

I. The respondent is directed to pay delay possession charges to the complainant against the paid-up amount at the prescribed rate of interest

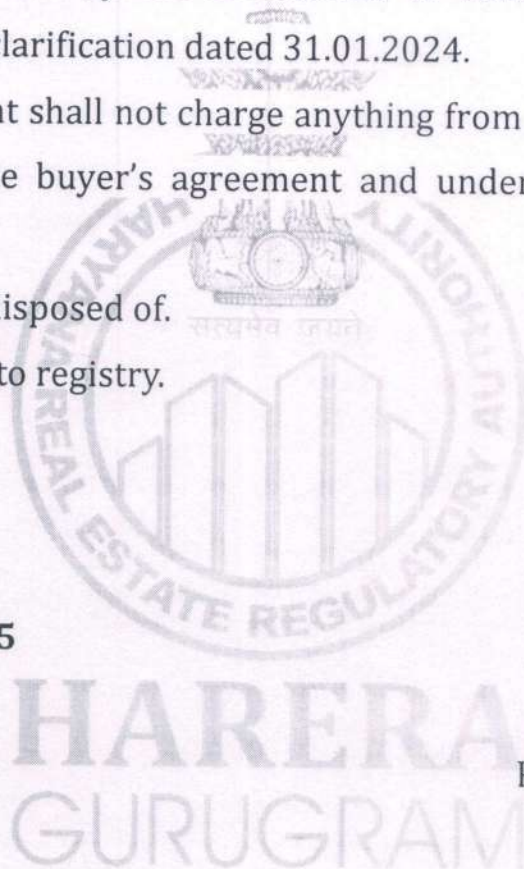
- i.e., 11.10% p.a. for every month of delay from the due date of possession 16.03.2021 till valid offer of possession plus two months, after obtaining occupation certificate from the competent Authority or actual handing over of possession, whichever is earlier as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
- II. The arrears of such interest accrued from due date of possession of each case till the date of this order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to allottee(s) before 10th of the subsequent month as per Rule 16(2) of the Rules, *ibid*.
- III. The complainant is directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of 30 days.
- IV. The respondent is directed to offer the possession of the allotted unit within a period of 30 days from the date of this order, since occupation certificate has already been obtained by the respondent-promoter on 31.12.2024.
- V. The respondent is directed to get the conveyance deed executed within a period of 60 days from the date of this order upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government in terms of Section 17 of the Act.
- VI. The rate of interest chargeable from the allottee by the promoter, in case of default, shall be charged at the prescribed rate i.e., 11.10% by the respondent, 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.
- VII. The respondent cannot place any condition or ask the complainant 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 versus Emaar MGF Land Ltd.**"

- VIII. The respondent is directed to provide details i.e., exact layout plan of the allotted unit in question to the complainant within a period of 1 month from the date of this order.
- IX. 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.
- X. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement and under the Affordable Housing Policy, 2013.
34. Complaint stands disposed of.
35. Files be consigned to registry.

Dated: 23.04.2025



Ashok Sangwan
(Member)

Haryana Real Estate
Regulatory Authority,
Gurugram