

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

Complaint no.:	4865 of 2023
Date of filing of complaint:	19.03.2024
First date of hearing:	22.02.2024
Order reserved for:	13.02.2025

1. Shikha Basu

R/o: 2C 2D, Sunflower Apartments Tatultala, Mandal
Para, Garia, Kolkata-700084, West Bengal

2. Aninda Basu

R/o: C-403, Sharirang Nano City-1, Sargasan,
Gandhinagar, Gujrat-382421

Complainants**Versus****M/s Ashiana Dwellings Pvt. Ltd.**

Regd. office: 3H, Plaza M6, District Centre, Jasola, New
Delhi-110025

Respondent**CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Shri Garvit Gupta (Advocate)
Shri Nitish Harsh Gupta (Advocate)

Complainants
Respondent

ORDER

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

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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.	Heads	Information
1.	Name and location of the project	"Ashiana Mulberry", Sector 2, Sohna, Gurugram, Haryana
2.	Nature of the project	Group Housing Colony
3.	Project area	10.25 acres
4.	DTCP License	16 of 2014 dated 10.06.2011
5.	Allotment letter	28.12.2017 (As per page 48 of the complaint)
6.	Date of execution of apartment buyer's agreement	29.01.2018 (As per page no. 43 of the complaint)
7.	Unit no.	C-1308 on 13th floor, Tower- T2 (As per page no. 48 of the complaint)
8.	Revised unit no. due to change in nomenclature	C-12A08, 12A floor, Tower T2 (As per page no. 99 of the complaint)
9.	Super Area	697.83 sq. ft. (As per page no. 48 of the complaint)
10.	Possession clause	7(ii) <i>Subject to receipt of Occupancy Certificate within 60 days from the date of Application, the Promoter assures to hand over the possession of the Apartment along with parking (if applicable) by 30th June 2019 plus a grace period of 6 months as per agreed terms and conditions unless there is delay due to "force majeure",.....</i> (As per page 56 of the complaint)
11.	Due date of delivery of possession	30.12.2019 (Due date as per clause 7(ii) i.e., 30.06.2019 + 6 months grace period) (Grace period of 6 months is allowed being unqualified)

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12.	Basic sale price	Rs.50,41,344/- (As per page no. 102 of the complaint)
13.	Total sale consideration	Rs.60,23,028/- (including Electrical Substation charges, Fire Fighting Charges, EDC, IDC, Electric Meter connection charges etc. plus taxes) (As per details provided by the respondent on page no. 6 of the reply)
14.	Total amount paid by the complainant	Rs.55,55,303/- (As confirmed by complainant vide proceedings dated 14.11.2024 and also confirmed by the respondent at page no. 2 of written submissions filed by the respondent)
15.	Occupation Certificate	02.11.2022 (As per page no. 109 of complaint)
16.	Offer of possession	03.11.2022 (As per page no. 100 of complaint)
17.	Reminder letters	29.04.2023, 14.09.2023, 14.09.2023, 30.10.2023, 17.11.2023, 06.12.2023 & 26.12.2023 (As per cancellation letter dated 18.01.2024 on page no. 22 of the reply)
18.	Cancellation letter	18.01.2024 & 09.02.2024 (As per page no. 22 & 24 of the reply)

B. Facts of the complaint:

3. The complainants have made the following submissions:

- I. That the respondent offered for sale units in a group housing complex known as 'Ashiana Mulberry' which claimed to comprise of multi-storied apartments, residential units, car parking spaces, recreational facilities, gardens etc. on a piece and parcel of land situated in village Sohna, sector 2, District Gurugram. The respondent also claimed that the respondent was entitled to construct, develop and sell the residential group housing project over the project land and that it would throughout act strictly as

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per the law, rules, regulations and the provisions laid down by the concerned authorities.

- II. That the complainants received a marketing call from the office of respondent in the month of September, 2017 for booking in the above-mentioned residential project of the respondent. The complainants had also been attracted towards the aforesaid project on account of publicity given by the respondent through various means like various brochures, posters, advertisements etc. The complainants visited the sales gallery and consulted with the marketing staff of the respondent. The marketing staff of the respondent painted a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the respondent in its project. The marketing staff of the respondent also assured timely delivery of the unit.
- III. That the complainants booked a flat in the said project of the respondent by submitting a Booking Application Form in the month of January, 2018 and made the payment of Rs. 6,00,000/- at the time of booking. The respondent had issued several receipts for the same dated 22.01.2018. It is pertinent to mention that the complainants further made a payment of Rs 28,65,488/- dated 29.01.2018 and the receipt towards the same was issued by the respondent on 30.01.2018. Accordingly, unit no C-1308 in the tower T2 was allotted to the complainants by the respondent.
- IV. That a copy of the buyer's agreement was sent to the complainants which was a wholly one-sided document containing totally unilateral, arbitrary, one-sided, and legally untenable terms favoring the respondent and was totally against the interest of the

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purchaser, including the complainants herein. Despite specific assurances of the respondent at the time of booking that the terms of the agreement would be more balanced and non-arbitrary, the said agreement contained several clauses which were totally discriminatory and biased towards the respondent.

- V. That the complainants made vocal their objections to the arbitrary and unilateral clauses of the buyer's agreement to the respondent. The complainants repeatedly requested the respondent for execution of a Buyer Agreement with balanced terms. However, during such discussions, the respondent summarily rejected the bonafide request of the complainants and stated that the agreement terms were non-negotiable and would remain as they were. The respondent/ promoter refused to amend or change any term of the pre-printed buyer's agreement and further threatened the complainants to forfeit the previous amounts paid by them if further payments are not made. It is pertinent to mention herein that the complainants had made payment of substantial amount before the execution of the agreement and hence the complainants were left with no other option but to accept the lopsided and one-sided terms of the buyer's agreement. Since the complainants had duly paid a huge amount out of their hard-earned money, they felt trapped and had no other option but to sign the dotted lines.
- VI. That as per the mutually agreed payment plan, i.e., the time linked payment plan, as intimated for the first time to the complainants in the price list and later reiterated in schedule C of the agreement. It was mutually agreed that the complainants would not be burdened with any random payment demand and that the payment demands would be sent by the respondent to the complainants strictly as per

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the order mentioned in the said price list and the said payments will only become due and payable as and when the said stages of construction are and schedule C of the agreement as the complainants would be planning and raising the amount payable keeping in view the mutually agreed payment plan.

- VII. That the complainants have till date made the payment of Rs. 55,55,303/- out of the total sale consideration amount of Rs. 53,11,150/- strictly as per the terms of the allotment and the time linked payment plan and no default in making timely payment towards the instalment demands has been committed by the complainants. It is submitted that the respondent/promoter used to only provide a short time span to make the payment of all the payment demands. Yet, all the payments were made by the complainants without any delay, rather the complainants have paid more amount than the total sale consideration and there was never any delay caused by the complainants in making such payments.
- VIII. That despite having made the buyer agreement dated 29.01.2018 containing terms very much favorable as per the wishes of the respondent, still the respondent miserably failed to abide by its obligations thereunder. The respondent/promoter even failed to perform the most fundamental obligation of the agreement which was to handover the possession of the flat within the promised time frame, which in the present case was delayed for an extremely long period of time. The failure of the respondent and the fraud played by it is writ large.
- IX. That as per clause 7.1 of the agreement, the possession of the unit was to be handed over by the respondent on 30.06.2019 along with a grace period of 6 months. As per the terms and conditions of the



apartment buyer's agreement, the due date to handover the possession of the allotted unit was 30.06.2019. It is pertinent to mention herein that the respondent miserably failed to comply with the said due date as the same has been lapsed back in 2019. There was inordinate delay in developing the project well beyond what was promised and assured to the complainants. This further shows that the demands which were raised by the respondent didn't correspond to the actual construction status on the site. On their part, the complainants were at all material times ready and willing to pay the balance consideration and other charges as per the terms of the allotment and they had ready funds for the same. However, as stated above the respondent miserably failed to abide by its obligations. As per the clause 5.1 of the agreement it was the obligation of the respondent to timely deliver the said unit to the complainants.

- X. That the respondent failed to even intimate about the construction status of the project to the complainants and the complainants were left in complete dark about the completion status of their unit in question. Accordingly, the complainants vide their email dated 23.05.2020 sought clarification from the respondent about the schedule delivery plan and requested the respondent to intimate about it at the earliest.
- XI. That since the time period to handover the possession stated by the respondent in the apartment buyer's agreement had lapsed, the complainants requested the respondent telephonically, and by visiting the office of the respondent to update them about the date of handing over of the possession. It is pertinent to mention herein that the complainants even visited the construction sites 10-12

times during the whole dealing with the respondent. The complainants expressed their dissatisfaction with respect to the pace of the construction. The representatives of the respondent assured the complainants that the possession of the unit would be handed over to them very shortly as the construction was almost over, despite there being no progress on the site every time the complainants have visited the site. The respondent continuously misled the allottees including the complainants by giving incorrect information and timelines within which it was to hand over the possession of the unit to the complainants. The respondent/promoter had represented and warranted at the time of booking that it would deliver the dream home of the complainants to them in a timely manner. However, the failure of the respondent company has resulted in serious consequences being borne by the complainants. The respondent misrepresented to the complainants that the possession would be handed over soon and the delayed interest would accordingly be adjusted.

- XII. That the respondent failed miserably to deliver the said unit to the complainants on time and rather the respondent changed the flat number that was allotted to the complainants from C - 1308 in Tower T2 to C - 12A08. Thus, it became evident that the respondent was deliberately trying to avoid the emails sent by the complainants and had no concern whatsoever with the grievances of the complainants.
- XIII. That several meetings were held between the complainants and the respondent between 2019 and 2022. Although outbreak of Covid-19 pandemic had resulted and impacted the financial condition and paying capacity of several allottees, yet the complainants assured

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the respondent that they would make the payment towards the total sale consideration if the delayed possession charges would be adjusted and possession of the allotted unit was handed over. It is pertinent to mention here that the due date of handing over of possession lapsed before the outbreak of COVID-19.

- XIV. That vide letter dated 03.11.2022, the respondent intimated to the complainants that the unit allotted to them was ready for possession as the respondent had obtained the occupation certificate dated 02.11.2022. On-going through the terms of the offer of possession, the complainants realized that respondent had unilaterally increased the sale consideration of the unit by demanding illegal charges which were not attributable to the complainants.
- XV. That the complainants challenged the imposition of several illegal charges such as delayed payment charges, maintenance charges, common area electricity charges, registration charges that were demanded by respondent under the garb of a 'legal' offer of possession. The complainants made vocal of their objections and sought clarifications from Respondent. However, respondent failed to pay heed to any of the genuine queries raised by the complainants.
- XVI. That despite receipt of more than the total sale consideration, the respondent has failed to handover the possession of the unit to the complainants. It is also noteworthy to mention herein that the respondent has charged GST at the rate of more than 12% from the complainants against the applicable rate of 5%. the respondent has failed to provide the credit for difference 7% GST to the complainants. The complainants are entitled to the said amount as

well from the respondent. This Hon'ble Authority cannot be a silent spectator to the illegalities committed by the respondent. The complainants have been running from pillar to post and have been mentally and financially harassed by the conduct of the respondent.

- XVII. That the respondent in utter disregard of its responsibilities has left the complainants in the lurch and the complainants have been forced to chase the respondent for seeking relief. Thus, the complainants have no other option but to seek justice from this Hon'ble Authority.
- XVIII. That the cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations. The cause of action arose when the respondent failed to handover possession and compensation for the delay on its part and finally about a week ago, when the respondent refused to make payment towards the delayed possession charges, revoke the illegal charges and make payment towards the interest along with compensation/damages.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. Direct the respondent to handover the possession of the allotted unit along with interest as prescribed under Real Estate (Regulation and Development) Act, 2016 and Haryana RERA Rules, 2017 from the due date to handover the possession till actual realization of the amount.
 - ii. Direct the respondent to execute the conveyance deed favouring the complainants as per Section 17 of the Real Estate (Regulation and Development) Act, 2016.

- iii. Direct the respondent to revoke the demand of Rs.60,984/- towards the external electrification charges, Rs.15,607/- payable towards delayed interest from the complainants, to revoke the demand towards maintenance charges including advance common area maintenance and management charges for 24 months, advance towards common area electricity (grid supply) charges for 24 months, advance towards the common area electricity charges for 24 months, potable water supply charges and external electrification charges and excess registration charges.
 - iv. Direct the respondent to provide the credit for difference 7% GST to the complainants along with prescribed rate of interest.
 - v. Direct the respondent not to demand holding charges from the complainants.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent contested the complaint on the following grounds:
1. That the complainants, out of their own free will and volition approached the respondent, made an application on 28.12.2017 and booked a unit bearing number C-1308, "Type C" on the 13th Floor, Tower-T2 having super built-up area of 1210 sq. ft. in the project being developed by the respondent in the name and style of "Ashiana Mulberry Phase-I" situated at Sector-02, Sohna, Gurgaon, Haryana. An amount of Rs.6,00,000/- was paid by the complainants at the time of booking of the unit. The complainants opted for time linked payment plan in order to make the payments of all the instalments as

mentioned in schedule-C of the apartment buyer agreement. It is pertinent to mention that owing to the request from few homebuyers of units on 13th floor, the nomenclature of units on the 13th floor was changed from C-1308 to C-12A08.

- II. That on 29.01.2018, the unit was allotted to the complainants and the provisional allotment letter of even date was handed over to the complainants. Further on 29.01.2018 itself, the agreement for sale dated 29.01.2018 was executed between the complainants and the respondent herein.
- III. That as per clause 7.1(ii) of the agreement, the respondent assured to handover the possession of unit by 30.12.2019 (including 6 months grace period) from the date of the agreement subject to receipt of occupancy certificate within 60 days from the date of application. However, it was also specifically stated in the said clause that the respondent shall be entitled to an extension of time for delivery of possession of the unit in case of force majeure conditions.
- IV. That the total sale consideration of the said unit was Rs.60,23,028/- (including taxes), out of which the Respondent has received a sum of Rs.55,55,303/- (after adjusting GST discount etc.) (including taxes) towards consideration. Ergo, a sum of Rs.4,83,331/- (including other possession related charges of Rs.2,69,390/-) still remains outstanding which the complainants have failed to pay qua the allotment of the said unit.
- V. That the complainants were under an obligation to adhere to the payment plan opted. Nevertheless, the complainants have repeatedly and wretchedly delayed and defaulted to adhere to the payment plan. It is submitted in terms of clause 1.2.1. to 1.2.7 under the heard "Remarks" at page 7 and 8 of the agreement, the charges and

expenses related to handing over of peaceful and vacant possession are clearly mentioned, hence the averments made by the complainants regarding charging of extra charges not forming part of the agreement are fallacious and bear no salt. Therefore, the complainants were liable to pay such balance dues.

- VI. That it would not be amiss to state that even after sending innumerable final reminders and final demand letters, the complainants, for the reasons best known to them, failed to make timely payments of the outstanding installments towards total sale consideration. It is submitted that even after the delay caused by various allottees including the complainants herein, in making the payment towards their respective units and various orders of the EPCA, HSPCB and the Apex Court, has finished the construction work of Phase-I of the said project and has received the occupation certificate on 02.11.2022 from the Director General, Town & Country Planning Department, Chandigarh bearing Memo No. ZP-1062/JD(RA)/2022/32955.
- VII. That the complainants, in various paragraphs, have also stated that the agreement for sale executed between the complainants and respondent was one-sided document containing unilateral, arbitrary, one sided and legally untenable terms favoring the respondent. However, appallingly, the complainants have only signed the agreement after going through each and every clause of the agreement. It is submitted that complainants never raised any objection during the course of execution of agreement, however, are making false allegations in an attempt to strengthen their case.
- VIII. That the respondent sent a letter dated 03.11.2022 wherein the respondent had persuaded the complainants to take possession of

their unit by making full payment of the outstanding dues qua the allotment of unit. The said notice dated 03.11.2022 was followed by reminder letters dated 29.04.2023, 21.08.2023, 14.09.2023 and 30.10.2023, however, paying no heed to the letters being sent by the respondent, the complainants proceeded with filing complaint on 09.11.2023. it is reiterated that complainants have never come forward either to clear the outstanding dues or to take the possession even till date.

- IX. That the complainants cannot seek relief of their own wrong. it is reiterated that the date of handing over the possession of the said unit was subject to timely payments of the installments in terms of the schedule C of the agreement, grant of occupation certificate and 'force majeure' clause mentioned in the agreement which the complainants have deliberately chosen to ignore. It is further submitted that the complainants have already been apprised of the terms and conditions laid down in the apartment buyer agreement and the complainants only signed it after being aware of all the charges and sale consideration.
- X. That the complainants have mentioned that an amount of Rs.30,010/- has been illegally demanded by the respondent towards the registration charges. It is specifically mentioned in the possession intimation letter dated 03.11.2022 that amount is payable to the Govt. and not to respondent towards registration charges.
- XI. That the complainants have referred to an email dated 23.05.2020 however, the said email is not supported by certificate under section 65(B) of the Indian Evidence Act 1872, hence no reliance can be placed upon such email. With respect to charging of GST, it is



submitted that in case of an ongoing project, developer has the option to pay GST at old rate also i.e. 12%. It is submitted that since Ashiana Mulberry Phase I was ongoing project at the time of this amendment in GST law, it had opted to pay GST at old rate i.e. 12%. Therefore, it is false and frivolous allegation that respondent has charged GST at higher rate.

- XII. That upon receiving the occupation certificate on 02.11.2022, the respondent had immediately sent the possession letter on 03.11.2022 along with the customer ledger wherein the respondent had persuaded the complainants to take possession of their unit by making full payment of the outstanding dues qua the allotment of unit. The said letter dated 03.11.2022 was followed by reminder letters dated 29.04.2023, 21.08.2023, 14.09.2023, 30.10.2023, 17.11.2023, 06.12.2023 and 26.12.2023. However, the complainants never came forward either to clear the outstanding dues or to take the possession. In this regard, it is submitted that the respondent cannot be expected to wait till eternity for the allottees to take possession when it is the duty of the allottees to take possession of their unit within two months of receiving the occupation certificate. In the present case, since the complainants never came forward despite sending several reminders, the respondent had no other option but to cancel their allotment.
- XIII. That pursuant thereto, as per the terms of the agreement and the RERA registration, subject to timely payment by the Allottees as well as subject to force majeure, the construction of the unit was to be completed by 30.12.2019 unless there is delay due to "force majeure", court order etc. It is pertinent to mention herein that the construction of the project was stopped several times during the

year 2017, 2018, 2019 and 2020 by the order of EPCA, HSPCB, NGT and the Hon'ble Supreme Court of India. It is most respectfully submitted that due to the increase in the level of pollution in the NCR region, the Hon'ble Supreme Court vide its order dated 14.11.2019 passed in the matter of "MC Mehta Vs Union of India & Others" bearing Writ Petition (c) No. 13029/1985 imposed complete ban on construction and excavation work across the National Capital Region from 04.11.2019, which was ultimately lifted on 14.02.2020. Ban on construction caused irreparable damage to the delivery timelines and the real estate developers' finances as the respondent was not able to undertake any construction work during the aforesaid period and the same was beyond the control of the respondent. Furthermore, the impact of Covid-19 pandemic has been felt throughout the globe and more particularly by Real Estate industry. The pandemic completely disrupted the supply chain of the respondent therefore the delay if any, is not attributable to the respondent herein.

- XIV. That the complainants, with the ill intentions to enrich themselves wrongfully at the cost of the respondent, have corroborated certain material facts while filing the captioned complaint. The complainants have failed to bring forth before this Hon'ble Authority that the respondent has send payment reminder letters dated 16.08.2018, 02.03.2019, 29.04.2023, 21.08.2023, 14.09.2023, 30.10.2023, 17.11.2023, 06.12.2023, 26.12.2023 to the complainants however, no response was received. The complainants on the other hand, filed the captioned complaint without disclosing that they have defaulted in making payments towards the total sale consideration. Since the complainants failed to respond to the reminder letters and make

payments in terms of Section 19(6) of the Real Estate (Regulation and Development) Act, 2016, the respondent was constrained to cancel the allotment of their unit vide cancellation letter dated 18.01.2024 which was duly delivered to them.

- XV. That in order to curb down the air pollution the Environment & Pollution (Prevention & Control) Authority, for National Capital Region, has reviewed the urgent action that needs to be taken for the implementation of the Graded Response Action Plan (GRAP) vide it's notification dated EPCA-R/2020/L-38 dated 08.10.2020 and has imposed ban on the use of diesel generator set with effect from 15.10.2020, which has further led to delay in the construction being raised.
- XVI. That the allotment of the complainant's unit has been already cancelled, the complaint filed by the complainants has become infructuous as it is not the case of the complainants that the cancellation of their unit is incorrect. In light of the said fact, the complaint deserves to be dismissed at the outset.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

8. 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

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate

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Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee 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 complainant at a later stage.

F. Findings on objections raised by the respondent:

F.I Objection regarding delay due to force majeure circumstances

10. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction, dispute with contractor, non-payment of instalment by allottees, GST, demonetization, shortage of labour, and COVID- 19. The plea of the respondent regarding

various orders of the NGT and demonetisation and all the pleas advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. The plea regarding demonetisation is also devoid of merit as it is a matter of economic policy of Central Government. Further, also there may be cases where allottee has not paid instalments regularly but all the allottee cannot be expected to suffer because of few allottee. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

F.II Objection regarding delay in completion of construction of project due to outbreak of Covid-19.

11. The respondent's invocation of the force majeure clause, citing the COVID-19 pandemic as a reason for non-performance, is without merit in this case. The contractual due date for possession was stipulated as 30.12.2019. This deadline occurred well before the imposition of the nationwide lockdown on 20.03.2020, which was a direct response to the pandemic. Therefore, the circumstances cited by the respondent as force majeure did not affect their ability to fulfil the contractual obligation by the specified due date. As such, the plea based on the alleged impact of the pandemic is not tenable and is hereby rejected. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong and the objection of the respondent that the project was delayed due to circumstances being force majeure stands rejected.

G. Findings on the relief sought by the complainants:

- G.I Direct the respondent to handover the physical possession of the unit along with interest.**

12. The complainants were allotted a unit bearing no. 1308, on 13th floor, in tower 13, admeasuring 697.83 sq. ft. vide allotment letter dated 28.12.2017. Thereafter, builder buyer's agreement was executed between the parties on 29.01.2018. Complainant paid an amount of Rs.55,55,303/- against the basic sale price of Rs.50,41,344/-. As per clause 7(ii) of the agreement, the respondent was required to hand over possession by 30.06.2019 with grace period of 6 months. Therefore, the due date of possession comes out to be 30.12.2019 including grace period of 6 months is being allowed unconditionally.
13. The respondent failed to hand over possession of the subject unit by the due date of possession i.e., 30.12.2019. 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. The authority is of the considered view that there is a delay on the part of the respondent to offer possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement executed between the parties.
14. As per contentions made by the complainants, the occupation certificate for the subject unit has been received on 02.11.2022 and on 03.11.2022 a letter for offer of possession along with outstanding demands has been sent to them. Thereafter, the respondent has issued various reminder cum demand letters dated 03.11.2022, 29.04.2023, 21.08.2023, 14.09.2023, 30.10.2023, 17.11.2023, 06.12.2023, 26.12.2023 to the complainants included various demands that were made without any calculation or justification. They sent various mail raising their queries but all went in vain. Subsequently respondent demanded holding charges from them for not occupying the unit. Lastly it has been contended that respondent out-rightly refused to accord their demands. On the contrary

the respondent contended that complainants consciously choose to ignore the demand letters/reminders.

15. The authority is of considered view that a valid offer of possession must be made after obtaining occupation certificate and should not be accompanied by unreasonable demands. In the instant complaint, the occupation certificate was obtained on 02.11.2022 and offer of possession was made on 03.11.2022 accompanied with additional demands on account of electric meter connection charges, external electrification charges which was not in consonance of buyer's agreement. Moreover, the respondent has demanded the interest for delay in making payments from the complainants without considering the interest to be paid by the respondent on account of delay in making offer of possession. Thus, additional demands raised by the respondent on offer of possession is clearly unjustified.

16. The unit was cancelled vide letter dated 09.02.2024 after various reminders and final opportunities were given to the complainants on account of non-payment.

Now, the question before the authority is whether this cancellation is valid or not?

17. It is matter of record that the complainants booked the aforesaid unit and paid an amount of Rs.55,55,303/- towards basic sale price of Rs.50,41,344/- which is more than 100% of the basic sale price and also 92% of the total sale consideration of Rs.60,23,028/- by even including Electrical Substation charges, Fire Fighting Charges, EDC, IDC, Electric Meter connection charges etc. This demand has been raised after factoring in the delay interest to be paid by the respondent. According to clause 7(ii) of the BBA, possession of the unit was to be handed over by 30.12.2019 including the grace period of 6 months. But the respondent

has obtained the occupation certificate of the project on 02.11.2022 and offered the possession on 03.11.2022 i.e., after a delay of almost 3 years. Though as per the payment plan opted by the complainants, 95% of the total sale consideration is to be paid before the offer of possession and remaining 5% is to be paid on offer of possession. But as per the applicant ledger placed on record, the complainants have paid 92% of the sale consideration way back in 2021 i.e., a year prior to the offer of possession has been made by the respondent. Also, the delay possession charges are to be paid by the respondent on account of delay of almost 3 years to offer the possession of the unit and if the same has been adjusted hardly any amount is left to be paid by the complainants.

18. The respondent has retained the complainant's funds, including accrued interest, for an extended period of 3 years. It appears that the respondent has unlawfully benefited from the complainant's payments while delaying project completion. Consequently, the promoter's conduct in demanding additional payments from the complainants is found to be unjustifiable, given that they had already remitted more than 100% of the basic sale consideration and 92% of the total sale consideration wherein all other charges are included. Therefore, the alleged cancellation dated 18.01.2024 & 09.02.2024 is bad in eyes of law and hereby quashed.

19. The complainant intends to continue with the project and is seeking delay possession charges against the paid-up amount as provided under the 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, —

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, **he shall be liable on demand of the allottees**, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, **to return**

the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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

20. As per clause 7(ii) of the draft agreement provides for handing over of possession and is reproduced below:

*Subject to receipt of Occupancy Certificate within 60 days from the date of Application, the Promoter assures to hand over the possession of the Apartment along with parking (if applicable) by **30th June 2019 plus a grace period of 6 months** as per agreed terms and conditions unless there is delay due to "force majeure",.....*

21. On consideration of the abovementioned clause, 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 7(ii) of the agreement, the possession of the subject unit was to be delivered by 30.06.2019 with an additional grace period of 6 months from the date of issuance of allotment letter. The due date including a grace period of 6 months which comes out to 30.12.2019.
22. The occupation certificate of the buildings/towers where allotted unit of the complainant is situated has been received on 02.11.2022 by the promoter i.e., after delay of almost 3 years of stipulated date of possession. The complainants are seeking delay possession charges on account of failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the buyer's agreement.
23. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at



such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

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

24. 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.
25. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 13.02.2025 is @ 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
26. 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:

"(z) "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;"

27. Therefore, interest on the delay payments from the complainants 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 as the respondent is in contravention of the provisions of the Act by virtue of clause 7(ii) of the buyer's agreement, the possession of the said unit was to be delivered on 30.12.2019.

28. Accordingly, the non-compliance of the mandate contained in 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 prescribed rate of the interest @ 11.10 % p.a. w.e.f. 30.12.2019 till the date of offer of possession plus 2 months after obtaining the occupation certificate or actual handover, whichever is earlier as per provisions of Section 18(1) of the Act read with rule 15 of the rules.

G.II Direct the respondent to execute the conveyance deed favouring the complainants as per Section 17 of the Real Estate (Regulation and Development) Act, 2016

29. Section 17 (1) of the Act deals with duty of promoter to get the conveyance deed executed and the same is reproduced below:

"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 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."

30. As OC of the unit has been obtained by the competent authority on 02.11.2022, therefore, conveyance deed can be executed with respect to the unit. Accordingly, the authority directs the respondent to execute the

conveyance deed in favour of the complainants after settling the dues, if any within 90 days from the date of this order.

G.III Direct the respondent to revoke the demand of Rs.60,984/- towards the external electrification charges, Rs.15,607/- payable towards delayed interest from the complainants, to revoke the demand towards maintenance charges including advance common area maintenance and management charges for 24 months, advance towards common area electricity (grid supply) charges for 24 months, advance towards the common area electricity charges for 24 months, potable water supply charges and external electrification charges and excess registration charges.

31. The respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than one year.

• **Advance electricity charges and Portable water supply**

32. The issue w.r.t electricity charges and water connection charge etc. were dealt under Complaint no. **4031 of 2019 titled as Varun Gupta & Ors. Vs. Emaar MGF Land Ltd.** These connections are applied on behalf of the allottees and they have to make payment to the concerned department on actual basis. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the above said connections including security deposit provided to the units, then the promoters would be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the flat allotted to the complainants viz-a-viz the total area of the particular project. The complainants/allottees will also be entitled to get proof of all such payment to the concerned department along with composite proportionate to their unit before making payment under the relevant head.

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33. It is also clarified that there shall not be any loading or additional charges for such connection in the name of incidental charges and sometime under the name and style of informal charges which is an illegal charge.

- **Registration charges**

34. The registration of property at the registration office is mandatory for execution of the conveyance (sale) deed between the developers (seller) and the homebuyer (purchaser). Besides the stamp duty, homebuyers also pay for execution of the conveyance/sale deed. This amount, which is given to the developers in the name of registration charges, is significant. The authority considering the pleas of the developer-promoter directs that a nominal amount of up to Rs.15000/- can be charged by the promoter - developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard. For any other charges like incidental/miscellaneous and of like nature, since the same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged.

G.IV Direct the respondent to provide the credit for difference 7% GST to the complainants along with prescribed rate of interest.

35. 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 after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled for charging GST but builder has to pass the benefit of input tax credit to the buyer. That in the event the respondent-promoter has not passed the benefit of ITC to the buyers of the unit which is in contravention to the provisions of section 171(1) of the HGST Act, 2017 and has thus committed an offence as per the provisions of section 171 (3A) of the above Act. The allottee shall be at liberty to approach the State Screening Committee Haryana for relief under the HGST Act.

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G.V Direct the respondent to not to demand holding charges from the complainants.

36. The respondent is debarred from claiming holding charges from the complainants /allottees at any point of time even after being part of apartment buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3899/2020 decided on 14.12.2020.

H. Directions of the Authority:

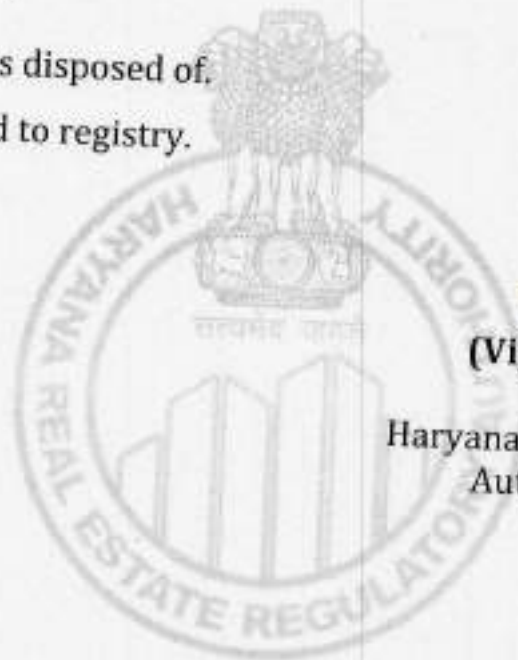
37. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. Cancellation letter dated 09.02.2024 is set aside being bad in eyes of law and the respondent is directed to reinstate the allotment of the complainant.
- ii. The respondent is directed to pay delay possession charges to the complainant against the paid-up amount of Rs.55,55,303/- at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 30.12.2019 till expiry of 2 months from the date of offer of possession(03.11.2022) i.e., 03.01.2023 as per section 18(1) of the Act of 2016 read with Rule 15 of the Rules, ibid.
- iii. The respondent is directed to issue a revised account statement after adjustment of delayed possession charges within 30 days and thereafter the complainant are directed to pay outstanding dues, if any, within next 30 days and the respondent shall handover the physical possession of the allotted unit complete in all aspects as per specifications of builder buyer's agreement.
- iv. 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(za) of the Act.

- v. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
 - vi. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
38. Complaint stands disposed of.
39. File be consigned to registry.

Dated: 13.02.2025



V. I. S.
(Vijay Kumar Goyal)

Member
Haryana Real Estate Regulatory
Authority, Gurugram

HARERA
GURUGRAM