

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

27.05.2025	

Name of the Builder Project Name		IRIS PLAZA PRIVATE LTD TERRA LAVINUM			
1.	1357 of 2023	Piyush Sarcen Vs Iris Plaza Private Ltd.	Adv. Arun Sharma	Adv. Necraj Puri(through VC)	
2.	1381 of 2023	Narayan Dutt Sharma Vs Iris Plaza Private Ltd.	Adv. Arun Sharma	Adv. Neeraj Puri(through VC)	
3.	1383 of 2023	Janki Devi Vs Iris Plaza Private Ltd.	Adv. Arun Sharma	Adv. Necraj Puri(through VC)	

CORAM: Dr. Geeta Rathee Singh Chander Shekhar

Member Member

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ORDER (DR. GEETA RATHEE SINGH-MEMBER)

1. This order shall dispose off all the above captioned three complaints filed by the complainants before this Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention

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of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

- 2. The core issues emanating from the above captioned complaints are similar in nature. The complainant in the above referred Complaint No. 1357 of 2023 and all other captioned complaints are allottees of the project namely; Terra Lavinium; being developed by the same respondent/ promoter, i.e., Iris Plaza Pvt. Ltd. The fulcrum of the issue involved in all the above captioned cases pertains to failure on the part of the respondent/promoter to deliver timely possession of the unit in question and all complainant(s) are now seeking possession of their booked apartments and delay interest. Accordingly, complaint no. 1357 of 2023 is taken as lead case for the purpose of diposal of this bunch.
- 3. The facts of all the complaints filed by the complainants/allottees are almost similar. The details of the complaints, unit no., date of allotment letter, date of builder buyer agreement, total sale consideration and amount paid by the complainant, offer of possession and relief sought are illustrated in the table below:

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Sr. no	Complaint no.	Reply Status	Unit no.	Date of execution of builder buyer agreement	Total sale considerati on (TSC) and amount paid by the complainan t (Paid amount)	Offer of possession(for fit out)
1.	1357 of 2023	Filed	B-304, 3rd floor, Tower B	02.01.2019	Paid- 27,49,609/-	10.06.2024
2.	1381 of 2023	Filed	B-601, 6 th floor, Tower	30.01.2019	TSC- 26,12,736/- Paid- 17,21,141/-	10.06.2024
3.	1383 of 2023	Filed	B-801, 8 th floor, Tower B	11.01.2019	TSC- 26,12,736/- Paid- 28,31,557/-	10.06.2024

COMPLAINT NO. 1357 of 2023 IS TAKEN AS A LEAD CASE AND BRIEF FACTS OF THIS COMPLAINT AS MENTIONEF IN THE COMPLAINT ARE AS UNDER

S.No.	Particulars	Details		
1.	Name of the project	"Terra Lavinium", Sector 75,		
		Faridabad nearby Delhi-Agra- Highway.		
2.	RERA registered/not	HRERA-PKL-FBD-8-2018 dated		
	registered	21.05.2018		
3.	DTCP License no.	79 of 2017		
4.	Licensed area	5.925 acres		

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5.	Unit no.	B-304	
6.	Unit area	640.684 sq. ft.	
7.	Date of allotment	10.12.2018	
8.	Date of builder buyer agreement	02.01.2019	
9.	Due date of offer of possession (48 months)	04.04.2022 as per clause 3.1 of the BBA it was stated that the developer proposes to offer possession of the said apartment to the allottee within a period of 4 years (48 Months) from the date of approval of building plans and or grant of environmental clearance, (herein after referred to as "Commencement Date", whichever is later.	
10.	Total sale consideration	₹26,12,736/-	
11.	Amount paid by complainant	₹27,49,609/-	
12.	Occupation Certificate	Not received	

4. Facts of complaint are that complainant had booked a flat in the project namely 'Terra Lavinium', Sector 75, Faridabad near Delhi-Agra-Highway of the respondent. Complainant was allotted unit bearing no. B-304 at Tower B, 3rd floor having area 640.684 sq. ft on 10.12.2018. Thereafter, builder buyer agreement for the said unit was executed between the parties on 02.01.2019. As per clause 3.1, possession was

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supposed to be delivered upto 04.04.2022. Complainant had paid an amount of Rs 27,49,609/- against the total sale consideration of Rs 26,12,736/-.

- 5. That Complainant has submitted that recently NCDRC has clarified that till lawful offer of possession accompanied with occupation certificate is obtained, builder is not permitted to demand electricity charges, maintenance charges etc. However respondent has not compensated the complainant for delay in offering possession to the complainant.
- 6. That only 40% of the work has been completed and out of 14 floors only 7 are completed and construction of 8 floors is going on till date.
- 7. That cause of action first arose when the builder buyer agreement contained unfair and unreasonable terms and then in June 2022 when the protests were lodged with the respondent party to refund the amount with interest.
- 8. That complainant has repeatedly sent e-mails to respondent to clear the issues so that payment could have been made by him but no clear answer was ever received from the respondent.
- 9. That the complainant does not want to withdraw from the project. The promoter has not fulfilled its obligation on the promoters under section 12,11(4) and 19(4), therefore the promoter is obligated to give delayed possession charges to the complainant.

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RELIEFS SOUGHT

- 10.. Complainant in their complaint has sought following reliefs:
 - (i) The respondent party may kindly be directed to pay delay payment interest under sections 11(4), 12, 18 & 19(4) of the RERA Act, 2016 and the HARERA rules and regulations thereunder.
 - (ii) Respondents may kindly direct to give possession of unit in question without further delay.
 - (iii) The respondent party may kindly be directed to pay the litigation cost of Rs. 1,00,000/- (One Lakh)
 - (iv) The respondent party may kindly be directed to refrain from raising unfair and unjust Demands.
 - (v) The respondent party may kindly be directed to refrain from giving effect to unfair clauses unilaterally incorporated in the Builder Buyer Agreement.
 - (vi) Any other relief/direction which the Hon'ble Authority deems fit and proper in the facts & circumstances of the present complaint.

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(vii) That in the interest of justice, this authority should pass strict and stringent orders against errant Promoters and developers who take huge investments from innocent investors and then deny them the right to take possession as agreed at the time of sale. The purpose and legislative intent behind setting up this authority should also be kept into consideration while deciding the present complaint as the respondent has only treated the complaints unfairly but many other such buyers.

REPLY ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 06.05.2024 pleading therein:

- 11. That, License bearing No. 79/2017 dated 04.10.2017 was granted to respondent by DTCP for setting up of an Affordable group housing colony for an area measuring 5.925 acres falling in the, Sector-75, Faridabad, Haryana.
- 12. That it is important to mention herein that the present project is being developed under the Affordable Housing Policy, 2013 and as per clause 1 (iv) of the Affordable Housing Policy, 2013, the 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. On 03.04.2018, the building plan for the given project was approved by the

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competent authority and thus in view of clause 1(iv) of the policy the completion date of the project would be 04.04.2022. Therefore, the present complaint is premature and liable to be dismissed.

- 13. It is further submitted that the complainant has booked the unit no. B-304 on 3rd floor of Terra Lavinium Residency Project and has agreed to pay Rs. 26,12,736/- as basic cost for the unit booked calculated on super area basis and further agreed to pay other charges as per policy of the Respondents as applicable to the building like EDC, IDC, Sinking Fund, Labour Cess, fire-fighting, external electrification, allied Charges and other dues and taxes. The complainant has signed and agreed to abide by the builder buyer agreement. The complainant has opted for fixed payment plan and had not made any payment on due time. The payments had been delayed by 1 year.
- 14. That the completion dates of project namely "Terra Lavinium" affordable residential project was 03.10.2022, however this Hon'ble Authority granted additional 9 months general extension for covid period to all the developers to complete the development works therefore completion date is 02/06/2023 as per the Act.
- 15. That more so the bans to construction activity imposed by the NGT from time to time and lastly in the months of October November, 2019 have further lead to delay in completion of the project which are per se beyond

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the control of respondent. True copy of the construction ban in NCR region is annexed herein as Annexure R-6.

16. That further it is stated that respondent has already applied for occupation certificate to Department of Town and country Planning, Haryana. Further, respondent has not offered possession and has rather offered fit outs possession which is different from offer of possession. It is pertinent to note here that since the possession is not offered to the complainant before getting occupation certificate, hence there is no cause or occasion to file the present complaint. That apparently, the complaint filed by the complainant is abuse and misused of the Process and is liable to be dismissed.

APPLICATION SUBMITTED BY THE COMPLAINANT ON 26.07.2024

17. Complainant has submitted an application whereby photographs showing current status of the construction of Tower B has been placed on record. Complainant has also submitted copy of the letter whereby possession has been offered to the complainant on 10.06.2024 along with demand of Rs. 1,71,441/-.

ARGUMENTS OF LEARNED COUNSEL FOR
COMPLAINANT AND RESPONDENT

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- 18.Ld. Counsel for the complainant submitted that arguments in all the captioned complaints are same therefore complaint no. 1357 of 2023 be taken as lead case and putting forth arguments for the same. During oral arguments learned counsel for the complainant insisted upon possession of booked unit along with delay interest. He submitted that respondent has charged interest on delayed payments from the allottees @ 15 % p.a. which is not in consonance with the RERA Act, 2017. Further, ld. counsel for the complainant drew the attention of the Authority towards a letter wherein respondent has offered fit out possession to the complainant annexed as annexure C-8, page-5 of the application dated 26.07.2024. In the said letter respondent has charged Rs. 22,680/- for external electrification, Rs. 22680/- for bulk supply electricity charges, Rs. 8260/- for smart electricity meter, Rs. 30241/- for utility connection charges, Rs. 11800/- for electricity connection charges, Rs. 17700/- for common area backup charges, Rs. 35,400/- for electricity connection charges. Argument of counsel for the complainant is that respondent is not justified in charging for electricity several times as mentioned in letter dated 10.06.2024.
- 19.Ld. counsel for the respondent submitted that as per clause 2.5 of the builder buyer agreement, complainant is liable to pay interest on the amount @15% p.a. and it is as per this clause respondent has charged

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interest. Further, deemed date of possession in the captioned complaints is 4 years from the date of approval of building plans i.e, 04.04.2022. The construction pace of the project got affected due to spread of covid-19 in the year 2020.

20.In rebuttal, ld. counsel for the complainant submitted that respondent cannot claim the period of covid-19 to be treated as force majeure as respondent has raised demands during the covid period duly paid by the complainants in the captioned complaints.

ISSUE FOR ADJUDICATION

- 21. Whether the complainants in all the above captioned complaints are entitled to delay interest on the amount deposited by them along with interest in terms of Section 18 of RERA Act of 2016?
- 22. Whether the respondent is justified in charging for electrification and electricity connection charges under different heads?

OBSERVATIONS AND DECISION OF AUTHORITY

23. The Authority has gone through the facts of the complaint as submitted by the complainant. In light of the background of the matter, Authority observes that complainant booked unit in the project "Terra Lavinum" being developed under Affordable Housing Scheme 2013 by the respondent/promoter namely Iris Plaza Pvt. Ltd. and accordingly complainant was allotted unit no. B-304 on 3rd floor, in the said project

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located at Sector-75, Faridabad, Haryana. The builder buyer agreement was executed between the parties on 02.01.2019. Complainant had paid a total sum of ₹27,49,609- against the total sale consideration price of ₹ 26,12,736 /- .As per clause 3.1of the agreement respondent/developer was under an obligation to hand over the possession to the complainant within 48 months from the date of approval of building plans or grant of environment clearance whichever is later. Respondent in his reply has admitted that the respondent/ developer received approval of building plans on 03.04.2018 meaning thereby that as per possession clause, a period of 4 years is to be computed from 03.04.2018, that comes to 04.04.2022. After paying his hand earned money, legitimate expectations of the complainant would be that possession of the unit will be delivered within a reasonable period of time. Authority observes that period of 4 years is a reasonable time to complete development works in the project and to handover possession to the allottee. However, apparently respondent has failed to hand over possession to the complainant. Consequently, complainant has exercised his right to seek delay interest on account of default on the part of respondent to offer legally valid possession within the time frame as per builder buyer agreement as per Section 18 of RERA Act, 2016. go the

- 24. Perusal of the payment plan at annexure "A" of the builder buyer agreement reveals that both the parties agreed to time linked payment plan according to which payments were to be made at periodic intervals;5% of the total cost was to be paid at the time of application, 20% of the total cost at the time of allotment05.12.2018 in complaint no. 1357 of 2023), 12.5% of the total cost within 12 months from the date of allotment, 12.5% of the total cost within 18 months from the date of allotment, 12.5% of the total cost within 24 months from the date of allotment, 12.5% of the total cost within 30 months from the date of allotment and 12.5% of the total cost within 36 months from the date of allotment.
- 25. However, respondent has averred that the completion date of the project as per registration certificate is 03.10.2022 and after grant of 9 months general extension granted by this Authority same is now 02.06.2023. In this regard, Authority is of the view that date of completion as mentioned in the registration certificate is declared unilaterally under section 4(2)(1)(C) of the Real Estate (Regulation and Devlelopment) Act, 2016 by the builder while registering the project before the Authority, whereas the time period for handing over the possession to the allottee is committed by the builder as per the relevant clause of builder buyer's agreement. Perusal of the payment plan reveals that the payment plan

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agreed between the parties is a time linked payment plan and said plan remained unchanged during the covid period also. There is no communication between the parties whereby the complainant allottee and the respondent promoter agreed to consider the force majeure period due to covid as zero period. Hence, respondent promoter cannot be allowed to alter the deemed date of possession unilaterally. Further, respondent has also taken a plea that due to various order of NGT the project could not be completed on time and therefore such period for which the construction work remained suspended should be treated as force majeure period. In this regard, Authority is of the view that NGT has regularly been passing orders suspending construction activity in the Delhi NCR region every year due to rise in pollution specially in the month of October- November. The promoters who are in the business of real estate development are aware of fact that such orders are passed every year w.r.t Delhi NCR region due to rise in pollution. Therefore such events should be considered at the time of planning/envisaging the development works. Annual directions by statutory agencies due to human caused reasons cannot be allowed/considered as a force majeure event. Hence, the commitment period of the promoter regarding handing over of possession of the unit is taken accordingly which in the present case is 4 years (03.04.2018) from the date of approval of building plan. The due date for

possession as per the agreement remains unchanged and the promoter is liable for the consequences and obligations under section 18(1) of the Real Estate (Regulation and Development) Act, 2016 arising out of failure in handing over possession by the due date as committed by him in the builder buyer's agreement.

26. It is the case of the complainant that respondent offered possession vide letter dated 10.06.2024 without obtaining occupation certificate and accompanied with illegal demands such as Rs. 22,680/- for external electrification, Rs. 22680/- for bulk supply electricity charges, Rs. 8260/for smart electricity meter, Rs. 30241/- for utility connection charges, Rs. 11800/- for electricity connection charges, Rs. 17700/- for common area backup charges, Rs. 35,400/- for electricity connection charges, therefore said offer was not a valid offer of possession. In this regard Authority observes that it is a matter of record that respondent has admitted the fact that vide letter dated 10.06.2024 respondent has 'never offered possession' instead what was offered was possession for limited purpose of carrying out fit out works in the unit. Admission on part of the respondent leaves no room for any ambiguity with respect to the fact that till date respondent has not offered legally valid possession of the unit to complainant. In fact respondent has gone to the extent of claiming that since no offer of possession has been made to complainant, no cause of Latera

section 18(1) of the Real Estate(Regulation and Development) Act, 2016 in case a promoter fails to offer possession possession of an apartment, plot or building to an allottee within the time period stipulated in the agreement to sell, a statutory right gets invoked in favour of the allottee either to demand refund of the amounts paid by the allottee for the unit or in case allottee wish to continue with the project then to claim interest for delay caused and in both circumstances promoter is liable to refund amount paid along with interest or interest for delay in possession as the case may be. Hence, in the captioned complaint the moment the due date stipulated in the agreement for sale lapsed, a cause of action arose and as the delay in offer of possession continues so does the cause of action.

27. Now the question is whether the payment demanded against for external electrification, bulk supply electricity charges, smart electricity meter, utility connection charges, electricity connection charges, common area backup charges and electricity connection charges by the respondent vide letter dated 10.06.2024 at the time of fit out offer of possession could have been raised at that stage and whether the respondent was rightly raising the above demands. As observed in the preceding para the payment plan opted by the parties is a time linked payment plan and the

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respondent was well within its rights to demand payments as per time/interval as provided in the said plan.

28. To adjudicate upon the issue of charges towards external electrification, bulk supply electricity charges, smart electricity meter, utility connection charges, electricity connection charges, common area backup charges and electricity connection charges reference is made to the relevant clauses of builder buyer agreement. Clause 4.3 of builder buyer agreement reads as under:

"The charges for providing external electrification, electric wiring in the said apartment, fire fighting measures/equipment's in the common areas as prescribed in the existing firefighting code/regulations and power backup shall be payable by the allottee in addition to the basic total cost, as prescribed herein"

29. In view of clause 4.3 of the agreement to sell Authority at the outset observes that respondent can charge for providing external electrification, electric wiring in the said apartment and fire fighting measures in the common area and power backup charges. It does not provide for bulk supply electricity charges, smart electricity meter, utility connection charges, electricity connection charges and common area backup charges. Therefore the demands under said heads could not have been raised by respondents and are per se illegal. With regard to the external electrification charges, electric wiring and fire fighting measures

Authority observes that the basic sale price of a unit also include electrification as street lighting is an integral part of internal development works and also includes disposal of sewage and sullage, water, fire protection and fire safety requirements, streetlight, electricity supply, transformers, etc. Some of these internal development works have to be done by the promoter. In this regard, it is useful to reproduce the definition of the term "Internal Development Works" as defined in section 2 (zb) of the Act. The same reads as under:

In this Act, unless the context otherwise requires,-

- (zb) "internal development works" means roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and sullage water, solid waste management and disposal, water conservation, energy management, fire protection and fire safety requirements, social infrastructure such as education, health and other public amenities or any other work in a project for its benefit, as per sanctioned plans".
- 30. External Development Charges are paid to the government in lieu of providing external infrastructure. The terms "External Development Works" has been defined in section 2 (w) of the Act as follows:
 - "2. In this Act, unless the context otherwise requires,(w) "external development works" includes roads and
 road systems landscaping, water supply, sewerage and
 drainage systems, electricity supply transformer, sub
 station, solid waste management and disposal or any
 other work which may haveto be executed in the periphery

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of, or outside, a project for its benefit, as may be provided under the local laws".

- 31.If the allottee has already paid these charges, then it would be unjust for him to pay further charges under the head "electrification charges" despite there being a condition for payment of these charges in the builder buyer's agreement, the allottee should not be made or compelled to pay amount towards electrification charges. Authority hereby concludes that that the promoter should not charge external electrification charges, electric wiring and fire fighting measures from the allottees while issuing offer of possession letter. Although provision of meter charges has not been provided in the builder buyer agreement but meter charges are allowed to be charged by the respondent and respondent shall be entitled to recover only the actual amount paid to the concerned department with respect to same. The complainant will also be entitled to get proof of all such payment to concerned department.
- 32. From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations to hand over possession within stipulated time as cast upon it under RERA Act, 2016 and consequently the complainant is entitled to delay "interest" from 04.04.2022 till the date of offer of a legally valid possession to the complainant after obtaining occupation certificate from the competent Authority.

- 33. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:
 - (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;
- 34. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is 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 subsections (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".

Consequently, as per website of the state Bank of India i.e., https://sbi.co.in, the highest marginal cost of lending rate (in short MCLR) as on date, i.e., 27.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

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35. Authority has got calculated the total amounts along with interest and monthly interest as per detail given in the table below:

Sr.	Complaint no.	Amount paid (in Rs)	Interest (in Rs)	Monthly interest (in Rs)
1.	1357 of 2023	27,49,609/-	9,52,537/-	25,085/-
2.	1381 of 2023	17,21,141/-	6,01,928/-	15,702/-
3.	1383 of 2023	28,31,557/-	9,22,596/-	25,833/-

that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "M/s Newtech Promoters and Developers PvL Ltd. V/s State of U.P. & ors." (supra,), has held that an allottee is entitled to claim compensation under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

DIRECTIONS OF THE AUTHORITY

- 37. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:
 - (i) Respondent is directed to pay the complainant upfront amount as provided in table in para 31 of this order. Respondent's liability for paying monthly interest of as shown in above table will commence w.e.f. 28.05.2025 and it shall be paid on monthly basis till valid offer of possession is made to complainant.
 - (ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.
 - (iii) The respondent is allowed to charge for smart meter however the amount/charges shall be the amount paid by builder towards said meter to the concerned department.
 - (iv) Respondent shall offer possession of the unit to complainant within 30 days of obtaining occupation certificate and the complainant shall also accept the same within next 30 days.

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In case of delay in making payment by the complainant, he shall as per Section 19(7) of RERA Act, 2016 shall be liable to pay interest at such rate as prescribed under Rule 15 of HRERA Rules, 2017.

Disposed off. Files be consigned to the record room after uploading of the order on the website of the Authority.

CHANDER SHEKHAR [MEMBER]

DR. GEETA RATHEE SINGH [MEMBER]