

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

Complaint no. : 4598 of 2023
Order reserved on: 07.01.2025
Order pronounced on: 18.03.2025

Smt. Kamlesh Radhu
R/o: H-No. H-105, Connaught Circus, New Delhi- 110001 **Complainant**

Versus

Experion Developers Private Limited
Registered office at: F-9, 1st Floor, Manish Plaza - I, Plot
No. 7, MLU, Sector 7, Dwarka New Delhi 110075
Also at:- Plot no. 18, 2nd Floor, Institutional Area, Sector-
32, Gurugram, Haryana - 122001 **Respondent**

CORAM:

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

Chairman

Member

Member

APPEARANCE:

Sh. K.K. Kohli (Advocate)

Sh. Venket Rao along with Smt. Gunjan (Advocates)

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 29 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 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name of the project	"Wind chants at Parkland, Phase 3", Sector - 112, Gurugram
2.	Nature of project	Group housing project
3.	RERA registered /not registered	64 of 2017 dated 18.08.2017 73 of 2017 dated 21.08.2017 112 of 2017 dated 28.08.2017
4.	Validity status	17.08.2018 20.08.2019 27.08.2019
5.	DTPC License no.	21 of 2008 dated 08.02.2008 28 of 2012 dated 07.04.2012
6.	Validity status	07.02.2020 06.04.2025
7.	Booking amount	Rs.11,00,000/- dated 31.07.2012 (Page 25 of the amended complaint)
8.	Allotment letter dated	07.08.2012 (Page no. 58 of reply)
9.	Unit no.	1204, block/tower WT -03, Floor-12 (schedule III of ABA at Page 73 of the amended complaint)
10.	Area admeasuring at the time of allotment letter	2650 sq. ft. (Page 73 of the amended complaint)
11.	Revised area admeasuring	2802 sq. ft. (As per annexure A5 at page no. 159 of reply)
12.	Date of apartment buyer agreement	26.12.2012 (As per BBA at page no. 39 of amended complaint)
13.	Building plan approved	07.06.2012 (Taken from the similar complaint no. 547 of 2022 for the same project being developed by the same respondent /promoter as alleged by the respondent in its reply at page no. 3 of the reply)
14.	Environment clearance	27.12.2012 (Taken from the similar complaint no. 547 of 2022 for the same project being developed by the same respondent)

		/promoter as alleged by the respondent in its reply at page no. 3 of the reply)
15.	Possession clause	<p>10 Project completion period</p> <p>10.1 Subject to Force Majeure, timely payment of the Total Sale Consideration and other provisions of this Agreement, based upon the Company's estimates as per present Project plans, the Company intends to hand over possession of the Apartment within a period of 42 (forty two months from the date of approval of the Building Plans or the date of receipt of the approval of the Ministry of Environment and forests, Government of India for the Project or execution of this Agreement, whichever is later ("Commitment Period"). The Buyer further agrees that the Company shall additionally be entitled to a time of 180 (one hundred and eighty days ("Grace Period") after expiry of the Commitment Period for unforeseen and unplanned Project realities. However, in case of any default under this Agreement that is not rectified or remedied by the buyer within the period as may be stipulated, the Company shall not be bound by such Commitment Period.</p> <p>(As per ABA at page no. 56 of amended complaint)</p>
16.	Due date of possession	<p>27.12.2016</p> <p>(Note:- Calculated from the date of EC being later i.e., 27.12.2012)</p> <p>Note: - Grace period of 180 days is allowed)</p>
17.	Total sale consideration	<p>Rs.2,14,77,989/-</p> <p>(As per schedule V of ABA on page no. 75 of amended complaint)</p>
18.	Amount paid by the complainant	<p>Rs.1,76,79,207/-</p> <p>(As per the cancellation letter dated 26.10.2023 at page 179 of reply)</p>
19.	Occupation certificate /Completion certificate	<p>23.07.2018</p> <p>(On page no. 157 of the reply)</p>
20.	Offer of possession	<p>25.07.2018</p> <p>(As per annexure A5 at page no. 159 of reply)</p>
21.	Pre cancellation letter dated	<p>11.10.2023</p> <p>(Page 177 of reply)</p>

22.	Cancellation letter	26.10.2023 (Page 179 of reply)
23.	Surrender request made by the complainant Page 172 reply 07.09.2019	At page 89 of the complaint, the complainant wrote a letter to the respondent to refund their amount due to delay in handing over but no date is mentioned. And again the same was done on 26.05.2017 at page 91 of the complaint. The same was done on 19.03.2019 at page 100 of the complaint.
24.	Amount forfeited	Rs.32,87,970.20/- (As per the cancellation letter dated 26.10.2023 at page 179 of reply)
	Amount Refundable	Rs.1,43,91,236.80/- (As per the cancellation letter dated 26.10.2023 at page 179 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:-

- I. That in the year 2008, the respondent issued an advertisement announcing a group housing project "Windchants" at Sector 112, Village Choma, Gurugram was launched by M/s Experion Developer Private Limited, under the licence no. 21 of 2008 dated 08.02.2008 and 28 of 2012 dated 07.04.2012, issued by DTCP, Haryana, Chandigarh, situated at Sector - 112, Village Choma, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of the unit in the said project.
- II. That relying on various representations and assurances given by the respondent company and on belief of such assurances, complainant-allottee, booked a unit in the project by paying an amount of Rs.11,00,000/- towards the booking of the said unit bearing no. 1204, Block/tower-WT-03, floor- 12, in Sector 112, having super area measuring 2650 sq. ft. to the respondent dated 31.07.2012.
- III. That the respondent confirms the booking of the said unit to the complainant providing the details of the project, confirming the booking



of the unit dated 31.07.2012, allotting a unit no. 1204, Block/tower-WT-03, floor-12 admeasuring 2650 sq. ft. (super built-up area) in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs.2,14,49,249/-, which includes basic price, VAT Rs.5,73,199/-, car parking charges of Rs.8,24,720/-, EDC of Rs.8,61,252/-, IDC of Rs.68,900.00, CBFC of Rs.2,06,180/- CBSD of Rs.1,00,000/- and IFMS of Rs.2,65,000/- and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.

- IV. That two copies of the apartment buyer's agreement was sent to the complainant by the respondent for signing the same. The complainant visits the office of the respondent company to execute the buyer's agreement. The representative of the respondent company said to the complainant that the authorised person was not available today and further assured that the copy of the buyer's agreement to deposit in our office and after the signing the same the company sent to her by post. She relies on the representative of the respondent company and submitted the same to Mr. Upendra Sharma on 15.01.2013.
- V. That in the absence of approved building plans, an allotment was made, the complainant was allotted unit no. 1204, block/tower-WT-03, 12th floor, in Sector 112 Gurugram. The respondent company collected approx. Rs.1,80,29,295/- in the year 2016 against the basic sale amounting to Rs.1,91,23,199/- of the total sale consideration as per payment plan. Despite of having paid around more than 93% of the payment against the total consideration amount in the year 2016, has been offered possession without completing our fall as promised at the time of booking and without obtaining the OC, even neither the complainant being allowed to inspect the allotted unit till date nor had been paid full compensation till date.



- VI. That the complainant has submitted that the respondent has failed to execution of the builder buyer agreement till date despite having received more than 93% of the consideration amount in the year 2016 as per section 13(1) of the Act of 2016, the builder cannot take more than 10% of the total sale consideration without execution of the builder buyer agreement. In the present case, the builder has received more than 93% of the total sale consideration in 2016. Neither the respondent executed the builder buyer's agreement nor did the physical possession hand over till date.
- VII. That as per clause 10.1 of the floor buyer's agreement the respondent had to deliver the possession within a period of 42 months from the date of execution of the agreement plus 180 days grace period. The date of execution of the agreement was not provided by the respondent/builder till date, the due date of possession can be considered from the date of booking or the date of provisional allotment letter in the absence of the date of execution of builder buyer agreement. The date of booking i.e., 31.07.2012, Therefore, the due date of possession comes out to be 31.07.2016.
- VIII. That the respondent sent a demand letter dated 04.06.2015 to the complainant raising demand of Rs.49,471/- and Rs.46,181/- on account of installation of geysers and provisions of piped gas and the same was paid by her. The respondent again sent a demand letter dated 01.09.2015 and 05.02.2016 respectively to complainant raising demand of Rs.14,13,959/- and Rs.12,482.208/- and the same was paid by the complainant on account of start of top floor roof slab and the same was paid by the complainant. The respondent sent a letter dated 27.04.2017 to the complainant with regard to finalization of area Ref. WT-03/1204 and increased in area from 2650 sq. ft. to 2802 sq. ft. The respondent



sent a demand letter dated 01.09.2015 to complainant raising demand of Rs.14,13,959/- on account of the start of top floor roof slab around the same was paid by the complainant. Thereafter the respondent has issued an applicant ledger dated 06.12.2016 sent to the complainant clearly mentioned that the complainant had paid a sum of Rs.1,80,29,295/- on 15.01.2016 i.e., 93% of the total sale consideration of the allotted unit.

- IX. That the respondent issued a letter dated 04.09.2023, and clearly mentioned that clearing the outstanding dues within a period of 30 days issuance of this letter, will constrain to cancel the allotment of the unit as agreed terms of the agreement. The complainant further submitted that she had made the 93% payment against the total sale consideration in the year 2016. Further the complainant is ready to take physical possession of the allotted unit as well as pay the outstanding dues if any, after adjustment of the delayed possession charges. Moreover, the complainant submitted that there is delay of more than 10 years from the date of booking till the said letter dated 04.09.2021, the due date of possession can be considered as 31.12.2016, there is delay of more than 7 years, the delayed possession charges can be accrued against the respondent/builder in the below mentioned table:-

S. No.	Amount paid by the complainant	Due date of possession
1.	Rs.1,80,29,295/- (as per applicant ledger dated 06.12.2016)	31.07.2016 From the date of booking or date of provisional letter in the absence of the date of execution of builder buyer agreement. The date of booking i.e., 31.07.2012
As per RERA Rules 2017, SBI MCLR +2% i.e., 8.75+2=10.75% till date: Rs.1,80,29,295*10.75*7 = Rs.1,35,28,040/-		

There is no outstanding dues as per above table, if there is any outstanding amount payable by the complainant to the respondent after

adjustment of delayed possession charges she is ready to make the payment and to take the physical possession.

- X. That the respondent sent a demand letter dated 27.09.2017 for Rs.28,50,003/- on account of increase in super area. The complainant has brought to the notice of the Authority that the respondent has increased/finalised the super area without completing the construction work as well as without obtaining the occupation certificate. The complainant after many requests through email as well speed post with regard to many financial losses accrued by the complainant but the respondent has failed to file any response till date. It is pertinent to note here that along with the above said letter of offer of possession respondent raised several illegal demands on account of piped connection charges of Rs.49,471/-, geyser charges of Rs.46,181/-, (EDC and IDC, CBFC, CBSI), IFMSD, club membership charges, and advance maintenance charges etc., which was never the part of the payment plan provided along with allotment letter and apartment buyers agreement. Furthermore, increased the super area also from respondent had arbitrarily 2650 sq. ft. to 2802 sq. ft.
- XI. That the complainant has suffered on account of deficiency in service by the respondent and as such the respondent is fully liable to cure the deficiency and the respondent is guilty of deficiency in service within the purview of provisions of the Act, 2016 and the provisions of the Rules of 2017.
- XII. That the respondent have played a fraud upon the complainants and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The respondent had further failed to implement the BBA executed with the complainant. Hence, the complainant being aggrieved by the

offending misconduct, fraudulent activities, deficiency, and failure in service of the respondent is filing the present complaint.

C. Relief sought by the complainant:

4. The complainant has filed the present complaint for seeking following reliefs:

- i. Direct the respondent to restrain the letter dated 04.09.2023, 11.10.2023, 26.10.2023 with regard to cancellation of the allotted unit of the complainant till the final adjudication of the present complaint, and the respondent not to cancel the allotment of the subject unit.
- ii. Direct the respondent interest of every month of delay at the prevailing rate of interest till the time of valid offer of possession is made by the respondent/promoter after adjustment of dues if any payable by the complainant.
- iii. Direct the respondent to handover the possession after completing the flat in all aspects to the complainant as soon as possible.
- iv. Direct the respondent to provide the copy of OC, and all other documents submitted by the respondent to DTCP regarding the zoning plans, layout plans, and drawings of the building.
- v. Direct the respondent to restrain the respondent from raising any fresh demand with respect to the subject unit.
- vi. Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like EDC, IDC, CBFC, CBSD, club maintenance, car parking charges, advance maintenance charges, increase in super area, which in any case is not payable by the complainant.
- vii. Direct the respondent not to ask for the monthly maintenance charges for a period of 12 months or more before giving actual physical possession of the unit is completed in all aspects.
- viii. Direct 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.
- ix. Direct the respondent to quash illegal holding and other charges levied by the respondent.
- x. Direct the respondent to pay a sum of Rs.1,50,000/- as cost of litigation/present proceedings to the complainant.
- xi. Direct the respondent to pay a sum of Rs.1,50,000/- compensate for the house rent paid by the respondent until physical possession of the allotted unit is handed over to the complainant.
- xii. Direct the respondent to pay a sum of Rs.5,00,000/- for the harassment and mental agony suffered by the complainant.

5. On the date of hearing, the authority explained to the respondent /promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

D. Reply by respondent:

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:-

- i. That at the outset, it is relevant to state the respondent is a real estate company engaged in the business of the development and construction of the real estate projects and is one of the reputed companies in the real estate sector. That vide application form dated 31.07.2012, Mrs. Kamlesh Radhu applied for booking of 3 BHK residential unit bearing No. 1204, in Tower WT-3, admeasuring 2650 sq. ft. in the project namely "Windchants". Accordingly, the subject unit was provisionally allotted to the complainant vide provisional allotment letter dated 07.08.2012.
- ii. That the present complaint has been preferred by the complainant on frivolous and unsustainable grounds and the complainant has not approached this Authority with clean hands and is trying to suppress material facts relevant to the matter. The instant complaint is not maintainable in the eyes of the law and is devoid of merit, therefore is fit to be dismissed in limine.

A. Default in payments & violation of section 19(6) of the Act, 2016

- iii. That the complainant being a real estate investor and having an intention of generating speculative gains had approached the representative of the respondent through a real estate broker and expressed her desire to invest in the instant project by way of booking a residential unit in the instant project of the respondent. The complainant after being fully satisfied in all respects the complainant



proceeded further and submitted an application for booking of a unit dated 31.07.2012 and opted for a construction linked payment plan.

- iv. That pursuant to booking application of the complainant, a unit bearing no. 1204, WT-03, admeasuring 2650 sq. ft. was provisionally allotted to the complainant. Thereafter, an apartment buyer agreement dated 26.12.2012, was executed between both the parties herein. That as per the agreed terms and conditions of the ABA, it was incumbent upon the complainant to make timely payments of the instalments. On 25.10.2023, the complainant has only paid an amount of Rs.1,84,42,523/- against the total outstanding of Rs.2,31,55,282/-. It is specifically clarified that the amount of Rs.1,84,42,523/- is inclusive of Rs.3,48,849/- (adjustment done against delay compensation paid to the complainant) and Rs.64,379/- (credit provided against GST/Anti-profiteering credit to the complainant). Therefore, effectively the complainant had paid only an amount of Rs.1,80,29,295/- against the total outstanding dues of Rs.2,31,55,282/-.
- v. That the complainant despite agreeing to make the timely payments failed to pay the instalments as per the payment schedule. That the respondent was constrained to issue multiple reminder letters/final notices, requesting the complainant to make the payment against the timely instalments. As per section 19(6) of the Act, 2016 lays down the duty on the allottee to make necessary payments pertaining to the allotment of the unit as per the payment schedule and in a timely manner as per the demands raised. That the complainant has been in blatant violation of section 19(6) of the Act, 2016 as she has failed to pay the due instalments on time against the sale consideration amounts payable towards the unit. The complainant has opted for a construction linked



plan and the respondent accordingly has raised their demands on achievement of relevant milestones.

- vi. Despite being aware of the payment schedule and the fact that timely payment is essential for the completion of the project, the complainant had failed to make the requisite payment of the instalment as and when demanded by the respondent in compliance with the payment schedule. Upon not receiving the requisite instalment respondent had issued payment reminders, calling upon the complainant to make payment of the balance outstanding. Furthermore, the failure in making payment had a cascading effect on the completion of the project and further caused enormous business loss to the respondent. That despite the defaults of the complainants, the respondent earnestly fulfilled their obligations under the ABA and completed the project as expeditiously as possible in the facts and circumstances of the case. Therefore, there is no equity in favour of the complainant.

B. Occupation certificate for the subject unit is granted by the competent authority

- vii. Despite facing force majeure situations, has completed the construction of the unit and made an application for grant of occupation certificate on 07.12.2017. That the same was granted by the competent authority on 23.07.2018. That the nomenclature for the Tower WT-03 is used for the purposes of marketing and for general usage. However, the nomenclature for the same tower as per the sanctioned plan and occupation certificate is T-02.

C. Possession already offered to the complainant & violation of section 19 (10) & (11) of the Act, 2016 by the complainant

- viii. That post receipt of the occupation certificate the respondent offered the possession of the subject unit to the complainant vide notice of offer of possession letter dated 25.07.2018. In the said notice of offer of possession, the respondent as per the mutually agreed terms and



conditions of the ABA, has duly adjusted the delay compensation amounting to Rs.3,48,849/- against the outstanding amounts payable by the complainant. That the complainant despite receiving the offer of possession, neither came forward to take possession of the unit nor cleared the outstanding dues against the sale consideration of the unit. Therefore, the respondent was constrained to issue reminder letters to the complainant for taking possession of the subject unit. The notice of possession was also sent via email to the complainant on the same date i.e. 25.07.2018.

- ix. That it was mutually decided between the complainant and the respondent in the ABA, that after the issuance of the occupancy certificate by the competent Authority, the respondent shall offer the possession of the subject unit and after due completion of all the documentation work and payment of all the due amounts under the ABA, the parties may proceed forward and execute a conveyance deed. Furthermore, as per section 19(10) of the Act, 2016, the complainant was under the obligation to take possession of the subject unit within a period of two months of the occupancy certificate issued for the subject unit. However, the complainant failed to fulfil that obligation and thus liable for the breach committed. As per section 19(11) of the Act, 2016 it is an obligation upon the allottee(s) to execute the conveyance deed. Therefore, the complainant by not taking possession of the unit and by not executing the conveyance deed has not only breached the terms and conditions of the ABA but has also violated the provisions of the Act, 2016.

D. Attachment of the subject unit by the Income Tax Department & complainant's request for refund

- x. That post receipt of the occupation certificate, the respondent offered the possession of the subject unit *vide* notice of offer of possession letter



dated 25.07.2018. However, the complainant did not come forward to take the possession of the unit. In the meanwhile, on 28.01.2019 the Income Tax Department, in relation to some default of the complainant in payment of its dues, passed an Order in form I.T.C.P. 16 (i.e., order of attachment of immovable property) against the allotted unit of the complainant whereby the subject unit was attached and sealed. There were also specific directions of prohibition and restrictions by the Income Tax Department that until further orders, the unit cannot be transferred to any third party.

- xi. That it is important to bring to the knowledge of this Authority that the complainant, while the unit was attached by the Income Tax Department,
 - i. Opted to exit from the project by making a **request for refund on 04.04.2019.**
 - ii. Further, *vide* **Letter dated 07.09.2019** requested the respondent to release the money paid by the complainant to the Income Tax Department by way of cancellation of the unit.
- xii. That the said unit could not be cancelled or acted upon by the respondent till specific directions were passed by the Income Tax Department. Finally *vide* Order dated 23.08.2023, the Income Tax Department released the said unit.

E. Cancellation of the unit due to default of the complainant

- xiii. That the complainant neither took possession of the unit nor did the complainant clear the outstanding dues against the sale consideration of the unit after several reminder. That after the release order of the Income Tax department, the respondent was constrained to issue a final notice dated 04.09.2023, requesting the complainant to pay the outstanding dues and complete the formalities for the execution of the conveyance deed. That in the said letter it was specifically mentioned that in the event the complainant fails to comply with the final notices



then the allotment of the unit shall be cancelled. That the complainant despite receiving the final notice dated 04.09.2023 failed to:

- a. Take possession of the unit;
- b. Clear the outstanding dues;
- c. Complete the formalities for the execution of the conveyance deed.

Therefore, the respondent was constrained to issue a pre-cancellation letter dated 11.10.2023 and provided the complainant with the last and final opportunity to clear the outstanding dues and complete the formalities for the execution of the conveyance deed.

xiv. That it is bring to the knowledge of the Authority that the complainant despite receiving the pre-cancellation letter dated 11.10.2023 failed to pay the outstanding dues and complete the formalities for execution of the conveyance deed. Therefore, the respondent was constrained to issue a cancellation letter dated 26.10.2023 whereby the allotment of the complainant was cancelled. That the cancellation letter was also sent via email to the complainant on the same date i.e. 26.10.2023.

xv. That in the cancellation letter dated 26.10.2023, details with respect to the forfeited amount and the amount refundable to the complainant were specifically mentioned. That the complainant had taken a loan for purchasing the subject unit, and upon the cancellation, the complainant was duty-bound to provide a loan foreclosure report and other documents/NOCs from the bank for completing the formalities of refund. However, to the utter surprise of the respondent, the complainant did not complete the requisite formalities and proceeded to contest this present complaint.

F. Misrepresentation and concealment of facts by the complainant

a. Apartment buyer agreement duly executed between the parties

xvi. That the complainant is concealing the true facts in the complaint. That the complainant with a malafide intention of gaining a favourable order from this Authority is putting forth wrong allegations against the



respondent. The complainant in para 13 of the complaint alleges that the respondent despite receiving more than 10% of the sale consideration of the subject unit has not executed the ABA till date.

- xvii. That post allotment of the subject unit to the complainant, the respondent has sent two copies of the ABA to the complainant for her signatures and requested the complainant to submit the signed copies of the ABA with the respondent for completing the other formalities of execution of ABA. That the fact that two copies of the ABA were sent to the complainant is specifically acknowledged by the complainant in para 9 of the complaint. However, to the utter shock of the respondent, it is reiterated herein that the complainant is alleging that till date the said ABA was not executed by the respondent.
- xviii. That the complainant after signing the ABA has handed over the said ABA to the respondent, and the respondent after completing the requisite formalities had signed and executed the said ABA. Moreover, a signed and duly executed copy of the ABA was also sent to the complainant with a covering letter dated 16.03.2013 and the same was duly received by the complainant. That the fact that the ABA was signed and delivered to the complainant can be verified from a mere perusal of the signature of the complainant on ABA and letter dated 16.03.2013 which the complainant herself signed at the time of receiving the copy of the ABA.

b. Allegations with respect to incomplete unit and non-issuance of occupation certificate

- xix. That the respondent on the first date of hearing i.e., 26.10.2023 as well as through its reply to the application preferred by the complainant under section 36 of the Act, 2016, the respondent has brought on record that the application for grant of occupation certificate, which was made before the competent authority on 07.12.2017 and the same was



granted by the competent authority on 23.07.2018. However, to the utter surprise of the respondent, the complainant at each date of hearing, has consistently brought up the issue that the respondent had not obtained the occupation certificate. That the same can be verified from a mere perusal of the orders dated 26.10.2023, 13.02.2024 and 19.03.2024. That to clear the confusion with respect to the status of the occupation certificate, change in unit and tower, the Authority *vide* its order dated 13.02.2024 appointed Shri. Sumit Nain as a local commission to inspect the project site and to file a detailed report with respect to the status of the tower and unit.

xx. That in compliance with the order dated 13.02.2024 the local commission visited the project of the respondent on 15.03.2024 in the presence of the complainant and inspected the project of the respondent and submitted its detailed report with this Authority. That the local commission after inspecting the project, plans/approvals granted by the competent authority has concluded that:

- a) the respondent has completed the construction of the tower in which the unit of the complainant was situated and obtained the occupation certificate on 23.07.2018;
- b) location of the tower is the same as it was shown to the complainant at the time of booking;

xxi. That after perusing the report of the local commission, it is abundantly clear that the unit/tower in dispute is completely developed and the occupation certificate of the same has also been granted by the DTCP.

Thus, the offer of possession made on 25.07.2018 was a valid offer of possession which further signifies that post-issuance of notice of possession, the cancellation of the subject unit due to defaults of the complainant is also valid and is in consonance with the Act, 2016 and the Rules & Regulations made thereunder.

G. Due justification for force majeure conditions which were beyond the control of the respondent:

- xxii. Without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that construction/ completion of the project got hampered due to force majeure situations beyond the control of the respondent. That some of the force majeure situations faced by the respondent which affected or led to stoppage of the work for a brief amount of time is being reiterated herein for the sake of clarity: Delay by the competent authority in granting the occupation certificate; NGT Order; Demonetization of Rs.500/- and Rs.1000/- currency notes; GST Implications; Jat Reservation Agitation; Delay by Contractor.
- xxiii. That the respondent despite facing the force majeure situations beyond its control has completed the construction/development of the project and has offered the possession of the subject unit to the complainant post issuance of the occupation certificate. That it is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought and a concocted story, hence, the present complaint filed by the complainant deserved to be dismissed with heavy costs.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
8. The complainant and respondent have filed the written submissions on 17.09.2024 and 01.10.2024 respectively which are taken on record and has been considered by the authority while adjudicating upon the relief sought by the complainant.

E. Jurisdiction of the Authority:

9. 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 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 allottee 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.

10. 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. Objections raised by the respondent:-**F.I Objection regarding force majeure conditions:**

11. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as NGT Order, Delay by the contractor, Demonetization, GST application, JAT Reservation Agitation but all the pleas advanced in this regard are devoid of merit. The subject unit was allotted to the complainants on 28.07.2012 and as per provisions of agreement, its possession was to be offered by 27.12.2016. The due date as per possession clause comes out to be 27.12.2016 including 6 months grace period.
12. The events such as demonetization and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous whereas there is a delay of more than two years. Even after due date of handing over of possession. Whereas if it comes for GST, the GST was applicable from 01.07.2017 and JAT reservation was for only one or two months. Further, grace period of 6 months on account of force majeure has already been granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent/promoter. Thus, the promoter/respondent cannot be given any leniency on basis of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.
- G. Findings on the relief sought by the complainant**
- G.I Direct the respondent to restrain the letter dated 04.09.2023, 11.10.2023, 26.10.2023 with regard to cancellation of the allotted unit of the complainant till the final adjudication of the present complaint, and the respondent not to cancel the allotment of the subject unit.**
13. In the present matter, the complainant was allotted a unit bearing no. 1204, 12th floor, in block/tower WT -03, admeasuring 2650 sq. ft. vide allotment letter dated 07.08.2012. The complainant has paid an amount of Rs.1,80,29,295/- against the basic sale consideration of Rs.1,91,23,199/- (excluding car parking, EDC, IDC, CBFC, CBSD and IFMSD) as per payment plan annexed with the buyer's agreement, which constitute i.e., 92.27% of

the basic sale consideration in the year 2016. The buyer's agreement was executed on 26.12.2016, as per possession clause 10.1 of the BBA, the possession of the unit was to be delivered to the complainant by 27.12.2016 including grace period of 6 months on account of force majeure circumstances. However, the respondent/promoter has offered possession to the complainant on 25.07.2018 after obtaining the occupation certificate only on 23.07.2018 from the competent authority. Consequently, the complainant did not turn to take over the possession and to clear outstanding dues, and the unit was cancelled by the respondent on 26.10.2023 after issuing pre-cancellation letter dated 11.10.2023.

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

14. On the basis of documents placed on record and submission made by both the parties, the Authority observes that the cancellation by the respondent to be unfair and invalid for the following reasons: *Firstly*, as per record, the complainant has paid an amount of Rs.1,80,29,295/- against the basic sale consideration of Rs.1,91,23,199/- i.e., 92.27% in the year 2016. The respondent has raised additional demand of Rs.67,76,107/- at the time of offer of possession. It is pertinent to mention here that as per buyer's agreement dated 26.12.2016, the total sale consideration of the subject unit was Rs.2,14,77,989/- and the complainant has paid an amount of Rs.1,80,29,295/-. Thus, only an amount of Rs.34,48,696/- was outstanding and payable by the complainant at per the buyer's agreement. However, the respondent raised a demand of Rs.67,76,107/- (i.e., approx. double of the balance sale consideration) without given any justification. Further, the respondent has adjusted a mere amount of Rs.3,48,849/- (Rs.7.5/- per sq. ft. of the super area per month as per clause 13.1 of BBA) towards the compensation for delay in handing over possession. The Authority observes

that the adjustment made by the respondent towards delay in handing over of possession is in contravention of the provisions of Section 18 the Act, 2016 read with Rule 15 of the Rules 2017.

15. Moreover, after offer the possession of the subject unit, on 28.01.2019, the Income Tax Department, in relation to some default on the part of complainant in payment of its dues, passed an order in form ITCP 16 (i.e., order of attachment of immovable property) against the allotted unit of the complainant whereby the subject unit was attached and sealed. There were specific directions of prohibition and restrictions by the Income Tax Department that until further orders, the unit cannot be transferred to any third party. Thereafter, the complainant opted to exit from the project by making a request on 04.04.2019 and further vide letter dated 07.09.2019 requested the respondent to release the money to the Income Tax Department by way of cancellation of the unit but the unit could not be cancelled or acted upon by the respondent till specific directions from the Income Tax Department. Finally vide order dated 23.08.2023, the Income Tax Department released the unit.
16. Secondly, vide letters dated 04.08.2016, 13.10.2016, 27.01.2017, 23.10.2017, 26.05.2017, 12.05.2018, 19.03.2019, 04.04.2019 and 07.09.2019, the complainant requested the respondent to refund the amount paid by her. But the respondent ignored all the above mentioned requests and failed to act in furtherance to the said requests made by her. The Authority observes that the complainant was in need of the money at that time as she faced certain financial crises, but the respondent failed to refund the amount (with deduction/without deduction). However, the complainant on not getting the refund despite multiple requests later opted to clear the outstanding dues after adjustment of the delayed possession charges and to take physical possession of the allotted unit. But instead of acceding to the above request

for possession which otherwise already stands offered. The respondent issued a pre-cancellation letter dated 11.10.2023 and a cancellation letter dated 26.10.2023 on account of non-payment of outstanding dues (i.e., on the first date of hearing and after filing of the present complaint i.e., 28.09.2023). It is worth observing that as per section 18(1) of the Act, 2016 it is upon the wish of the allottee either she wishes to continue with the project or withdraw from the project, and in the present complaint, the complainant/allottee is intending to continue with the project for which a considerable amount has already been paid in the year 2016.

17. *Thirdly*, the cancellation of the unit was done on 26.10.2023, whereas the instant complaint was filed before the Authority on 28.09.2023 after supplying a copy of the same to the respondent on 25.09.2023. It seems that on getting aggrieved by the complaint filed by the allottee, the promoter has expeditiously raised demands from the complainant and ultimately cancelled the unit to the complainant/allottee on 26.10.2023 (i.e., on the first date of hearing in the said complaint). On 26.10.2023, Authority had directed the respondent to not to create any third any party rights against the allotted unit of the complainant till the next date of hearing and the interim directions continued accordingly.
18. In light of the aforesaid reasons, the Authority is of considered view that the cancellation made by the respondent vide letter dated 26.10.2023 is not valid in the eyes of law. Seeing, various illegalities on part of the respondent in this particular case, the Authority is of view that the respondent should not be allowed to get unfair advantage of its own wrong. In view of the above, the said cancellation letter dated 26.10.2023 is hereby set aside being bad in the eyes of law.

G.II Direct the respondent interest of every month of delay at the prevailing rate of interest till the time of valid offer of possession is made by the respondent/promoter after adjustment of dues if any payable by the complainant.

G.III Direct the respondent to handover the possession after completing the flat in all aspects to the complainant as soon as possible.

19. In the present complaint, the complainant intend to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

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

20. Clause 10 of the buyer's agreement (annexed but not executed) provides for handing over of possession and is reproduced below:

Clause 10. PROJECT COMPLETION PERIOD

10.1 Subject to Force Majeure, timely payment of the Total Sale Consideration and other provisions of this Agreement, based upon the Company's estimates as per present Project plans, the Company intends to hand over possession of the Apartment within a period of 42 (forty two months from the date of approval of the Building Plans or the date of receipt of the approval of the Ministry of Environment and forests, Government of India for the Project or execution of this Agreement, whichever is later ("Commitment Period"). The Buyer further agrees that the Company shall additionally be entitled to a time of 180 (one hundred and eighty days ("Grace Period") after expiry of the Commitment Period for unforeseen and unplanned Project realities. However, in case of any default under this Agreement that is not rectified or remedied by the buyer within the period as may be stipulated, the Company shall not be bound by such Commitment Period."

21. At the outset, it is relevant to comment on the present possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment

time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.

22. **Admissibility of grace period:** As per clause 10.1 of buyer's agreement dated 26.12.2012, the respondent/promoter proposed to handover the possession of the said unit within a period of period of 42 months from the date of approval of building plans or the date of receipt of approval of environment clearance or execution of this agreement whichever is later. In the present matter, the environment clearance was granted on 27.12.2012 and the due date of possession can be calculated from the date of EC i.e., 27.12.2012 being later. Therefore, the due date of possession comes out to be 27.12.2016 by allowing grace period being unqualified and being allowed in earlier case no. 530 of 2018.
23. **Admissibility of delay possession charges at prescribed rate of interest:** As per 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.
24. 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., 18.03.2025 is @ 9.10 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
25. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the

promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.

26. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoters which the same is as is being granted to them in case of delayed possession charges.
27. 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 10.1 of buyer's agreement dated 26.12.2012 (annexed but not executed), the possession of the subject apartment was to be delivered within a period of period of 42 months from the date of approval of building plans or the date of receipt of approval of environment clearance or execution of this agreement whichever is later. The due date of possession is calculated from the date of environment clearance being later plus 180 days grace period which comes out to be 27.12.2016. The respondent has offered the possession of the allotted unit on 25.07.2018 after obtaining occupation certificate from competent Authority on 23.07.2018. The Authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement (annexed but not executed).
28. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 23.07.2018. However, the respondent offered the possession of the unit in question to the complainant only on 25.07.2018, so it can be said that the complainant came to know about the occupation

certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, he should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 27.12.2016 till the expiry of 2 months from the date of offer of possession (25.07.2018) which comes out to be 25.09.2018.

29. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent 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. from the due date of possession i.e., 27.12.2016 till 25.09.2018 i.e., expiry of 2 months from the date of offer of possession (25.07.2018) as per proviso to section 18(1) of the Act read with rule 15 of the rules.
30. The respondent is further directed to issue a revised statement of account after adjustment of delayed possession charges within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues, if any, after adjustment of delayed possession charges next 30 days from the receipt of the statement of account and shall take physical possession of the subject unit.

G.IV Direct the respondent to provide the copy of OC, and all other documents submitted by the respondent to DTCP regarding the zoning plans, layout plans, and drawings of the building.

31. On 13.02.2024, the Authority has appointed Shri Sumeet Nain planning co-ordinator of the Authority to check the status of the unit if there is variation *vis a vis* the status, location and numbering of tower shown at the time of

booking. In compliance of the said order, the Local Commissioner has visited the project site on 015.03.2024. The report of the Local Commission was received on 18.03.2024, and the conclusion portion is reproduce as under:-

- *The promoter had complete the construction of tower wherein the complainant units exists and obtained the occupation certificate vide no. ZP-595/SD(BS)/2018/21631 dated 23.07.2018 from DTCP for the same. The DTCP has granted occupation certificate for the tower T2 as per their record.*
- *As on date the location of tower wherein the complainant unit exists is same where it was shown to the complainant at the time of booking as per the marketing plan available on the site in sales office.*
- *The numbering of tower wherein the **complainant unit exists had been changed from time to time i.e., as per marketing plan the tower is numbered as WT-03, as per approved site plan by DTCP the tower is numbered as T2, as per approved plan superimposed by promoter for registration of project the tower is numbered as T3. Further, as per current site status, the promoter has numbered the single tower with three different numbers i.e., WT-03, T2 & T3 indifferent documents.***
- *Marketing palm by promoter, approved site plan by DTCP, approved site plan superimposed by promoter along with photographs captured at the time of inspection of the project site particularly the tower in question are attached herewith for reference please.*

32. Further, as per section 11(4)(b) of Act of 2016, the respondent/builder is under an obligation to supply a copy of the OC/CC to the complainant/allottee. The relevant part of section 11 of the Act of 2016 is reproduced as hereunder:-

"11(4) (b) The promoter shall be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be."

33. Moreover, 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 /promoter is directed to provide details i.e., calculation of area of the unit in question to the complainant within a period of 1 month from the date of this order.

G.V Direct the respondent to restrain the respondent from raising any fresh demand with respect to the subject unit.

34. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

G.VI Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like EDC, IDC, CBFC, CBSD, club maintenance, car parking charges, advance maintenance charges, increase in super area, which in any case is not payable by the complainant.

35. As per above mentioned relief sought, the complainant alleged that at the time of offer of possession the respondent has raised an demand w.r.t. EDC, IDC, CBFC, CBSD, club maintenance, car parking charges, advance maintenance charges and increase in super area which is not part of the buyer's agreement. The respondent on the other hand contended that such charges charged by the respondent company which is part of the buyer's agreement as wall payment plan.

36. On the documents and submissions made by both the parties the Authority observes that the said charges are mentioned in the payment plan. Also as per clause 4.2 of the buyer's agreement reflected the said charges and the same are not part of the basic sale price The Authority has gone through the relevant clause of the buyer's agreement and the same is reproduced for ready reference:-

"4. TOTAL SALE CONSIDERATION AND TERMS OF PAYMENT

4.1

4.2 The BSP of the Apartment is exclusive of EDC and IDC and other statutory deposits 4.2 and/or charges, including charges for connections and use of electricity, water, sewerage, sanitation and other amenities, utilities and facilities or any other charges required to be paid by the Company to relevant authorities and shall be payable by the Buyer at such rates as may then be applicable and in such proportion as the Sale Area of the Apartment bears to the total sale area of all the apartments in the Project. If in case at any time in the future, such charges/rates are revised due to enhancement in government and statutory dues, or rates of taxes, cesses or charges under Applicable Laws are enhanced (including with retrospective effect, if applicable), or if fresh notifications and/or amendments/modifications thereto are announced by any Government and/or Competent Authority, including but not limited to revision in the EDC/IDC/other statutory charges, increase in rates/amounts of any deposits/fees for the provision of electricity, water and sewerage facilities, additional fire protection/mitigation systems or other outgoings of whatever nature, whether prospectively, protection/mitigation systems, pollution control and effluent treatment plants, or retrospectively, and by whatever name called, the same

shall also be payable by the Buyer in such proportion as the Sale Area of the Apartment bears to the total sale area of all the apartments in the Project. All such charges shall be payable by the Buyer on first demand of the Company/Maintenance Agency, whether before or after registration of the Conveyance Deed and irrespective of the Payment Plan. Delays in making such Plan payments shall attract interest at rates as applicable for payments under the Payment."

37. A bare perusal of the aforesaid clause it makes clear that the said charges are not included in the BSP but that does not give a liberty to promoter to charge anything without justifying it to the allottee(s). The complainant is liable to pay EDC, IDC & other statutory deposits (for electrification, water, sewage connectivity, etc.) on pro-rata basis as actual paid to the concerned Department/Authority by the respondent/promoter subject to furnishing of details to allottee(s). However, as far as other charges are concerned, the respondent/builder is directed not to charge anything which is not part of the buyer's agreement. It is further clarified, if any additional services has been availed by the complainant other than as agreed between the parties, the respondent is entitled to charge for those services only.
38. **Increase in super area:** - As per allotment letter as well as buyer agreement, the area allotted to the complainant was 2650 sq. ft. The respondent has issued offer the possession of the allotted unit of the complainants on 25.07.2018, after obtaining occupation certificate. As per said letter, the respondent company revised/increased the super area of the unit of the complainant for 2650 sq. ft. to 2802 sq. ft. i.e., 5.73%.
39. Considering the above-mentioned facts, the Authority observes that as per clause 8 (**changes and variations in sale area**) of the buyer's agreement the respondent has increased or decrease the salable area of the apartment is the super area is 10%. In the present case, the respondent has increased the area of the unit from 2650 sq. ft. to 2802 sq. ft. at the time of offer of possession. As per the clause 8 of the agreement dated 28.12.2012, the allottee had agreed to pay amount due for increase in super area. Hence, the complainant

/allottee are liable to pay for the same subject to furnishing of justification and details.

G.VII Direct the respondent not to ask for the monthly maintenance charges for a period of 12 months or more before giving actual physical possession of the unit is completed in all aspects.

40. In the present complaint, the respondent has obtained the occupation certificate on 23.07.2018 from the competent authority and thereafter, offer the possession on 25.07.2018. The Authority observes that after issuance of occupation certificate, it is presumed that the building is fit for occupation. In multi-storied residential and commercial complexes, various services like security, water supply, operation and maintenance of sewage treatment plant, lighting of common areas, cleaning of common areas, garbage collection, maintenance and operation of lifts and generators etc. are required to be provided. Expenditure is required to be incurred on a consistent basis in providing these services and making available various facilities. It is precisely for this reason that a specific provision is incorporated in the builder buyer's agreement, as per clause 15, that the maintenance charges as may be determined by the respondent would be liable to be paid by the allottee.

41. Keeping in view the facts above, the Authority deems fit that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession.

G.VIII Direct 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.

42. The respondent is directed not to 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 V. Emaar MGF Land Ltd.**

G.IX Direct the respondent to quash illegal holding and other charges levied by the respondent.

43. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.
44. Moreover, the respondent is not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3899/2020 decided on 14.12.2020 (supra).
- G.X Direct the respondent to pay a sum of Rs.1,50,000/- as cost of litigation/present proceedings to the complainant.
- G.XI Direct the respondent to pay a sum of Rs.1,50,000/-compensate for the house rent paid by the respondent until physical possession of the allotted unit is handed over to the complainant.
- G.XII Direct the respondent to pay a sum of Rs.5,00,000/- for the harassment and mental agony suffered by the complainant.
45. The complainant in the aforesaid relief is seeking relief w.r.t compensation *Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021)*, 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 adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the 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.

H. Directions of the Authority:

46. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The cancellation letter dated 26.10.2023 is hereby set aside. The respondent is directed to re instate the allotted unit booked by the complainant within a period of 30 days from the date of this order.
- ii. The respondent/promoter is directed to pay interest at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainant(s) from the date of endorsement letter i.e., 27.12.2016 till 25.09.2018 i.e., expiry of 2 months from the date of offer of possession (25.07.2018) as per proviso to section 18(1) of the Act read with rule 15 of the rules. The respondent is directed to pay arrears of interest accrued so far within 90 days from the date of order of this order as per rule 16(2) of the rules.
- iii. Also, the amount of compensation already paid by the respondent towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.
- iv. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges within a period of 30 days from the date of this order.
- v. The complainant is directed to pay outstanding dues, if any, within 30 days after receipt of the revised statement of account and the respondent shall handover the physical possession in next 30 days to the complainant/allottee.
- vi. The respondent is directed to get the conveyance deed of the allotted unit executed in the favour of the complainants in terms of section 17(1) of the

Act of 2016 on payment of stamp duty and registration charges as applicable.


- vii. The respondent is directed to not to charge anything which is not part of the buyer's agreement. The respondent is not entitled to charge any amount against holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

47. Complaint as well as applications, if any, stand disposed off accordingly.

48. File be consigned to the registry.



(Ashok Sangwan)
Member



V.I. (Vijay Kumar Goyal)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.03.2025

HARERA
GURUGRAM