

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

Complaint no.: 4426 of 2024
Date of decision:- 14.05.2025

Sushant

R/o: - House no.-157-B, Sangam Vihar,
Dharampura Extension, Najafgarh,
New Delhi-110043.

Complainant

Versus

M/s. Deluris Buildtech India Pvt. Ltd.

Regd. office: D-64, Defence Colony,
New Delhi-110024.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sukhbir Yadav (Advocate)

Ankur Berry (Advocate)

Complainant

Respondent

ORDER

1. The present complaint dated 12.09.2024 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short,

the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Zara Rossa"
2.	Location of the project	Sectore-112, Bajghera, Gurugram.
3.	Project area	5.0065 acres
4.	Nature of project	Affordable Group Housing Colony
5.	RERA registered	Registered Vide registration no. 82 of 2017 Dated-23.08.2017
6.	DTCP License	License no.07 of 2016 Dated-28.06.2016
7.	Allotment letter	01.03.2018 (As on page no. 36 of complaint)
8.	Unit no.	No.-7, Floor-7 th , Tower-04 (As on page no. 35 of complaint)
9.	Unit area	539.3 sq.ft. [Carpet Area] 50 sq.ft. [Balcony Area] (As on page no. 35 of complaint)

10.	Agreement For Sale	06.06.2018 (As on page no. 39 of complaint)
11.	Possession clause	As per 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.
12.	Date of obtaining environmental clearance	30.11.2017 (As per the details provided by the promoter on the HRERA's website)
13.	Date of building plans approvals	17.06.2017
14.	Due date of possession	30.05.2022 (30.11.2021 + 6 months on account of covid-19)
15.	Sales consideration	Rs.21,82,200/- (As on page no.50 of complaint)
16.	Amount paid by the complainant	Rs.22,80,400/- (As on page no. 100 of complaint)
17.	Occupation certificate	14.05.2024 (As on page no. 51 of reply)
18.	Offer of possession	19.05.2024 (As on page no. 97 of complaint)

B. Facts of the complaint:

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

- I. That the complainant applied for the allotment of a residential flat in the project of the respondent namely "Zara Rossa" which was to be allotted through a draw of lots in the project and made a payment of

Rs.1,10,000/- on account of the booking amount through demand draft dated 20.09.2017 in favor of the respondent.

- II. That the complainant was allotted a 2 BHK-type 2 residential unit bearing no. 7 on 7th floor in Tower-4, admeasuring 539.3sq.ft, and balcony area of 50 sq.ft. along with 1 two-wheeler parking space in the project through an Allotment Letter dated 01.03.2018. Furthermore, the said allotment letter had a demand of Rs.4,79,194/- and the same was paid by the complainant. It is pertinent to mention here that the said unit was booked under the 'Time-Linked Payment Plan' for a total sale consideration of Rs.21,82,200/-.
- III. Thereafter, the Agreement to Sell was executed inter-se the respondent and the complainant on 06.06.2018. As per Clause 7.1 of the Agreement, the respondent had to give possession of the complainants' unit within 4 years from the date of approval of building plans or grant of environment clearance, whichever is later. It is relevant to note here that the building plans of the respondent's project were approved on 11.11.2016, therefore, the due date of possession was 11.11.2020.
- IV. That the complainant from September 2018 to March 2021, made 6 payments amounting to Rs.19,66,709/-. It is pertinent to mention here that the complainant has paid a substantial sum of Rs.25,55,903/- to the respondent against the subject unit, which is more than 100% of the total consideration. The details of the payments made by the complainant are as mentioned below:

S.No	Cheque/DD No.	Instrument Date	Amount	Receipt Date
1	957456	11.09.2018	150000	11.09.2018
2	123300	19.09.2018	144597	20.09.2018
3	724706	11.03.2019	294597	12.03.2019
4	185459	17.09.2019	275503	17.09.2019
5	NEFT/RTGS	20.06.2020	436000	04.08.2020
6	149697	22.03.2021	666012	---
TOTAL PAID			1966709/-	

- V. That the due date of delivery of the possession was on or before 11.11.2020. Despite the complainant paying over 100% of the unit's total cost on time, the respondent has failed to perform his obligation to hand over the unit to the complainant on time.
- VI. That after a three-year silence, on 09.11.2023, the respondent sent a letter to the complainant regarding 'Electricity Connection Charges'. The letter presented two options for the complainant to obtain an electricity connection:
- Either source it from a nearby external provider or*
 - opt for a switching station to be installed on the premises of the project.*
- VII. That on 19.05.2024, the respondent issued an offer of possession to the complainant, accompanied by two demand letters. The respondent has levied numerous unreasonable and illegal charges, despite the complainant having paid over 100% of the unit's cost, including taxes, as evident from the attached statement of account with the said offer of possession. Moreover, the said offer of possession comes more than three years after the stipulated possession date and is conditional upon the complainant meeting several unreasonable demands totalling to Rs.1,93,057/-.

- VIII. Additionally, the respondent is demanding an indemnity cum undertaking from the complainant to take possession of their unit, which is legally unjustifiable. It is pertinent to mention here that the demand for IFSD Rs.15,000/-, Labour Cess Rs.15,359/-, Advance Electricity Consumption Deposit Rs.4,500/-, Deposit Required for DHBVN Rs.12,201/-, Property ID Charges Rs.1,500/-, External Electrification Charges Rs.86,743/-, and Dual Fuel DG Conversion Set Rs.1,962/- are illegal and against the Affordable Housing Policy. Moreover, User charges of Rs.25,659/- and GMDA water charges of Rs.5,000/- are also illegal. Therefore, this offer of possession is unacceptable and legally flawed.
- IX. That the main grievance of the complainant in the present complaint is that despite having paid more than 100% of the actual cost of the unit, the respondent has failed to deliver the possession of the unit to the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):-

- i. Direct the respondent to give physical possession of the fully developed/constructed unit with all amenities without any pre-conditions.
- ii. Direct the respondent to execute the conveyance deed for the complainant's unit.
- iii. Restrain the respondent from charging unreasonable demands raised by the respondent in the offer of possession dated 19.05.2024 including charges under the head of IFSD Rs.15,000/-, Labour Cess Rs.15,359/-, Advance Electricity Consumption Deposit Rs.4,500/-, Deposit Required

for DHBVN Rs.12,201/-, Property ID Charges Rs.1,500/-, External Electrification Charges Rs.73,511/-, and Duel Fuel DG Conversion Set Rs.1,663/- user charges of Rs.25,659/- and GMDA water charges of Rs.5,000/- and demand of execution of indemnity cum undertaking OR To get an order in her favour by declaring the said offer of possession dated 19.05.2024 void.

- iv. Direct the respondent to pay delayed possession interest at the prescribed rate from the due date of possession i.e., 11.11.2020 till the actual date of possession (complete in all respects with all amenities).
- v. Direct the respondent to provide all the requisite documents to the complainant such as Statement of Account for her unit.

D. Reply by respondent:

5. The respondent by way of written reply made following submissions.

- I. That the present complaint has been filed against the Affordable Group Housing project namely, Zara Rossa, situated in the revenue estate of Village Bajghera, Sector-112, Gurugram, Haryana. That the Building plans were approved on 17.06.2017 and the said building plans were thereafter renewed on 11.01.2024. Further the Environmental Clearance for construction of the Affordable Group Housing Colony was received on 30.11.2017.
- II. That the complainant after being aware of the residential project filed an application and deposited the booking amount. Thereafter, the draw of lot was conducted on 23.02.2018 and the complainant was duly allotted Apartment No. 7 at 7th Floor, Tower-4, having carpet area 539.3 sq. ft and balcony area of 50 sq. ft vide allotment letter dated 01.03.2018. Further in terms of the Apartment Buyer's Agreement (ABA) the total

sale consideration for the said unit was Rs.21,82,200/- plus GST(Clause 1.2(iii)), charges for water, gas and other utilities, cess, duties, etc.,

- III. It is extremely pertinent to note that as per Clause 10, which defined the General Covenants the clause 10.2 stated

"The Allottee shall pay to the concerned Authority electricity, water and sewerage connection and consumption/service charges and contingency deposit as and when demanded by the authority".

- IV. Further as per Clause 10.10

"The Allottee shall pay to the concerned authority electric meter installation charges/water meter installation charges, security deposit for electric/water meter and their energizing charges, etc".

- V. That the Authority vide notification no. 9/3-2020 dated 26.05.2020 have provided an extension of 6 months for projects having completion date on or after 25.02.2020, on account of force majeure condition due to the outbreak of Covid-19 pandemic.
- VI. That the respondent was committed to complete the development of the project. It is pertinent to apprise to the Authority that the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of Good and Services Act, 2017 [hereinafter referred to as 'GST'] which came into force after the effect of demonetisation in last quarter of 2016 which adversely affected various industrial, construction, business area even in 2019. The respondent had to undergo huge obstacle due to effect of demonetization and implementation of the GST.
- VII. That further the National Green Tribunals have regularly imposed ban and restrictions on construction activities. Due to unforeseen circumstances and causes beyond the control of the respondent, the development of the project came to stand-still. The details of the ban on construction activities vide various directions of the National Green

Tribunals or the Statutory Authorities etc. are highlighted in the table below:

COURTS, AUTHORITIES ETC. / DATE OF ORDER	TITLE	DURATION OF BAN
National Green Tribunal /09.11.2017	Vardhman Kaushik Vs. UOI	09.11.2017 - Ban was lifted after 10 days (10 days)
National Green Tribunal /18.12.2017	Vardhman Kaushik Vs. UOI	18.12.2017 - 08.01.2018 (22 days)
Delhi Pollution Control Committee (DPCC), Department of Environment, Government of NCT of Delhi /14.06.2018	Order/Notification dated 14.06.2018	14.06.2018 - 17.06.2018 (3 days)
Haryana State Pollution Control Board/ Environment Pollution (Prevention & Control Authority)-EPCA	Press Note - 29.10.2018 and later extended till 12.11.2018	01.11.2018-12.11.2018 (11 days)
Hon'ble Supreme Court/ 23.12.2018	3 days Construction ban in Delhi/NCR	24.12.2018 - 26.12.2018 (3 days)
Central Pollution Control Board		26.10.2019 - 30.10.2019 (5 days)
Environment Pollution (Prevention & Control Authority)- EPCA- Dr. Bhure Lal, Chairman	Complete Ban	01.11.2019 - 05.11.2019 (5 days)
Supreme Court - 04.11.2019	M. C. Mehta Vs. Union Of India W.P. (c) 13029/1985	04.11.2019 - 14.02.2020 (3 months 11 days)
Haryana Real Estate Regulatory Authority, Panchkula extension on Second Wave	Extract of the Resolution passed in the meeting dated 02.08.2021,	3 months
The Authority vide notification no. 9/3-2020	Due to the outbreak of Covid-19 pandemic extension of 6 months for projects having completion date on or after 25.02.2020	6 Months
TOTAL		14 Months, 11 Days (Approx.)

VIII. Further the possession of the subject unit was to be delivered within 4 years from obtaining approval or building plans or environmental

clearance , which ever was later. That the renewed building plans were received on 11.01.2024 and the possession was offered on 19.05.2024. Further the period during covid-19 restriction and notification if counted there was no delay in completion of the project. The respondent duly applied for occupation certificate on 25.11.2022 and again on 13.07.2023 and the same was issued on 14.05.2024.

- IX. That the respondent issued an offer of possession on 19.05.2024, followed by a reminder on 05.09.2024 and a second reminder on 13.11.2024. Despite these communications, the complainant has shown no interest in taking possession of the unit or making any earnest efforts to do so. The respondent has consistently sent reminders regarding the possession of the unit and the delay attributable to the complainant.
- X. That as per the Clarification: PF-27A/2024/3676 dated 31.01.2024 issued by DTCP detailing the "*Clarification regarding maintenance charges to be levied on Affordable Group Housing Projects,*" an Office Order was issued. In this order, DTCP addressed the issue of maintenance charges and proposed two categories of maintenance charges. The complainant falling under Category-II can due demand consumption charges, property tax, wasted collection charges, charges for repair inside individual flat, etc. and the same are not free of charge for allottee of Affordable Group Housing, and wherein it is also clarified that the respondent is entitled to charge Interest-Free Maintenance Security (IFMS) as prescribed under the RERA Act, 2016, or the Haryana RERA Rules, 2017, along with any charges agreed upon through bilateral agreements.
- XI. That the respondent has miserably failed to make timely instalments as per the payment plan. The respondent have raised demand letters

strictly as per the payment schedule plan and reserves its right to impose penal interest along with due service taxes, thereupon.

XII. That the various contentions raised by the complainant are fictitious, baseless, vague, wrong and created to misrepresent and mislead this Authority, for the reasons stated above. That it is further submitted that none of the relief as prayed for by the complainant are sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost and hence deserves to be dismissed.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

7. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose 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

9. 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;

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 complainants at a later stage.

F. Findings on objections raised by the respondent:

F.1 Objection regarding delay due to force majeure circumstances

11. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal imposed ban on the construction activities, Environment Pollution (Prevention & Control) Authority, Delhi Pollution Control Committee(DPCC), Haryana State Pollution Control Board/Environment Pollution (prevention & Control Authority)-EPCA, Orders of Hon'ble Supreme Court, due to outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the

respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. In the present case, the allotment letter was issued by the respondent to the complainant on 01.03.2018. The 'Agreement For Sale' was executed between the parties on 06.06.2018. As per clause 1(iv) of the Affordable Housing policy, 2013, the due date for completion of project was 4 years from the date of approval of building plans or grant of Environmental Clearance, whichever is later. The building plans approvals were obtained from the concerned authorities on 17.06.2017 and the Environmental Clearance has been obtained on 30.11.2017. The due date in terms of Clause 1 (iv) of the Affordable housing Policy, 2013 , is calculated 4 years from the date of Environmental Clearance, being later, comes out to be 30.11.2021. The Authority vide notification no. 9/3-2020 dated 26.05.2020 have provided an extension of 6 months for projects having completion date on or after 25.02.2020, on account of force-majeure condition due to the outbreak of Covid-19 pandemic. The respondent is seeking the benefit of Covid-19, and in lieu of the notification of the Authority dated 26.05.2020, the benefit of the same is granted to the respondent. Thus, the due date comes out to be 30.05.2022 i.e., 30.11.2021 plus 6 months grace period on account of Covid-19. The respondent have submitted that due to various orders of the Authorities and court, the construction activities came to standstill. The Authority observes that though there have been various orders issued to curb the

environment pollution, but these were for a short period of time. The event of demonetization was in accordance with government policy and guidelines. Therefore, the Authority is of the view that the outbreak of demonetization cannot be used as an excuse for non-performance of a contract. In the instant complaint, the due date of handing over of possession comes out to be 30.05.2022 and 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-builder. Thus, the promoter/ respondent cannot be given any more leniency based on the aforesaid reasons.

G. Findings on the relief sought by the complainants.

- G.I Direct the respondent to give physical possession of the fully developed/constructed unit with all amenities without any pre-conditions.**
- G.II Direct the respondent to execute the conveyance deed for the complainant's unit.**
- G.III. Direct the respondent to pay delayed possession interest at the prescribed rate from the due date of possession i.e., 11.11.2020 till the actual date of possession (complete in all respects with all amenities)**

14. In the present complaint, the complainant booked a unit in the project of the respondent namely "Zara Rossa" situated at Sector-112, Village-Bajghera, Gurugram. The allotment was made in favour of the complainant on 01.03.2018 and thereafter, the Agreement For Sale was executed between the complainant and the respondent on 06.06.2018. As per

Clause 1(iv) of the Affordable Housing Policy, 2013, the respondent had to hand over possession of the unit to the complainant within a period of 4 years from the date of sanction of Building plans or grant of Environmental Clearance, whichever is later. The due date is calculated 4 years from the date of Environmental Clearance being later. Also, a period of six months is granted to the respondent in lieu of the notification of the Authority dated 26.05.2020 due to the Covid-19 outbreak. Thus, the due date of possession comes out to be 30.05.2022.

15. The complainant intends to continue with the project and is seeking possession and delay possession charges along with interest on the amount paid. 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.

"Section 18: - Return of amount and compensation

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

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

16. Clause 1(iv) of the Affordable Housing policy, 2013 provides for due date of possession and is reproduced below:

Clause 1(iv)

All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the „date of commencement of project“ for the purpose

of this policy. The licences shall not be renewed beyond the said 4 years period from the date of commencement of project.

[Emphasis supplied]

17. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the unit within a period of four years from the date of sanction of building plans or grant of Environmental Clearance, whichever is later. In the present matter, the Environmental Clearance was obtained on 30.11.2017, the period of four years is calculated from the date of obtaining the E.C, being later. Accordingly, the grace period of six months shall be allowed to the promoter on account of Covid-19.
18. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:
- "Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.***
- Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."***
19. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

20. 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., 14.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
21. 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. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. —For the purpose of this clause—*
- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
22. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
23. 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 1(iv) of the Affordable Housing Policy, 2013, the possession of the subject apartment was to be delivered by 30.11.2021. As far as grace period is concerned, the same is allowed for

the reasons quoted above. Therefore, the due date of handing over possession is 30.05.2022. The respondent has obtained the Occupation Certificate from the competent authorities on 14.05.2024 and thereafter offered the possession of the subject apartment to the complainant on 19.05.2024, which is delayed than the due date of possession of the unit. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within stipulated period.

24. 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 complainants are entitled to delayed possession at prescribed rate of interest i.e., 11.10% p.a. from the due date of possession 30.05.2022 till the offer of possession plus 2 months after obtaining the occupation certificate from the competent authorities or actual handover, whichever is earlier, as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.
25. The complainant is also seeking physical possession of the unit. The Occupation certificate has been obtained by the respondent from the competent authorities on 14.05.2024 and thereafter, the offer of possession has been made by the respondent to the complainant on 19.05.2024. The respondent is directed to handover possession of the unit to the complaint within 30 days of this order. Also, in terms of Clause 17(1) of the Act, 2016, the respondent is directed to execute registered Conveyance Deed in favour of the complainant within a period of 60 days from this date and the complainant is directed to pay the registration charges, stamp duty, requisite fees, as applicable.

G.IV. Restrain the respondent from charging unreasonable demands

raised by the respondent in the offer of possession dated 19.05.2024 including charges under the head of IFSD Rs.15,000/-, Labour Cess Rs.15,359/-, Advance Electricity Consumption Deposit Rs.4,500/-, Deposit Required for DHBVN Rs.12,201/-, Property ID Charges Rs.1,500/-, External Electrification Charges Rs.73,511/-, and Duel Fuel DG Conversion Set Rs.1,663/- user charges of Rs.25,659/- and GMDA water charges of Rs.5,000/- and demand of execution of indemnity cum undertaking OR To get an order in her favour by declaring the said offer of possession dated 19.05.2024 void.

25. The complainant has sought the relief regarding restraining the respondent from charging unreasonable demands as raised by the respondent in the Offer of Possession dated 19.05.2024 under the heads of IFSD, Labour Cess, Advance Electricity Consumption Deposit, Deposit required for DHBVN, Property ID charges, External Electricity Charges, Duel Fuel DG Conversion Set, User charges, GMDA Water charges or to declare the said offer of possession void.

• **IFSD Amounting to Rs.15,000/-**

26. IFSD (Interest Free Security Deposit) is a lump sum amount that the home buyer pays to the builder which is reserved/accumulated in a separate account until a residents' association is formed. Following that, the builder is expected to transfer the total amount to the association for maintenance expenditures. The system is useful in case of unprecedented breakdowns in facilities or for planned future developments like park extensions or tightening security. The same is a onetime deposit and is paid once (generally at the time of possession) to the builder by the buyers. The builder collects this amount to ensure availability of funds in case unit holder fails to pay maintenance charges or in case of any unprecedented expenses and keeps this amount in its custody till an association of owners

is formed.. IFSD needs to be transferred to association of owners (or RWA) once formed.

27. In the opinion of the authority, the promoter may be allowed to collect a reasonable amount from the allottees under the head "IFSD". However, the authority directs and passes an order that the promoter must always keep the amount collected under this head in a separate bank account and shall maintain the account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFMS amount and the interest accrued thereon, the promoter must provide details to the allottee. It is further clarified that out of this IFSD, no amount can be spent by the promoter for the expenditure he is liable to incur to discharge his liability under section 14 of the Act

• **Labour Cess amounting to Rs.15,359/-**

28. Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.09.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled as "**Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited**" wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent.
29. The Authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, no demand of labour cess can be raised upon the complainant and any amount thus raised is completely arbitrary and the complainant cannot be made liable to pay

any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

- **Advance Electricity Consumption Deposit amounting to Rs.4,500/-**
- **Deposit required for DHBVN amounting to Rs.12,201/-**
- **Meter connection Charges amounting to Rs.6,070/-**

30. With respect to the electricity connection charges there is no doubt that all these charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and release of such connections in the name of the allottee and are payable by the allottee. These connections are applied on behalf of the allottee and allottee has to make payment to the concerned department on actual basis. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the abovesaid connections including security deposit provided to the units, then the promoters will be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant viz- à-viz the total area of the particular project. The complainant/allottee will also be entitled to get proof of all such payment to the concerned department along with composite proportionate to his unit before making payment under the relevant head. In case of bulk supply of electricity, the concerned department/agency releases connection with certain terms and conditions of bulk supply and these are to be abided by the allottee. The allottee is also asked to give undertaking not to apply directly to any other electric supply company in his individual capacity for additional load of electricity other than being that provided through bulk supply arrangement. In this case, apart from bearing proportionate charges for

bulk supply of electricity connection to the project, the allottee has also to bear the individual meter connection expenditure from the bulk supply point to his unit.

31. Accordingly, the promoter will be entitled to recover the actual charges paid to the concerned department from the complainant on pro-rata basis on account of electricity connection depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project. The complainant will also be entitled to proof of such a payment to the concerned department along with a computation proportionate to the allotted flat, before making payment under the aforesaid head.

• **Property Id Charges amounting to Rs.1,500/-**

32. The respondent can charge the said charge as the same is payable at the time of execution of the Conveyance Deed in favour of the complainant.

• **External Electrification Charges amounting to Rs.73,511/-**

33. The respondent has made a demand of Rs.73,511/- on account of External Electrification Charges. It is pertinent to mention that it is the duty of the colonizer to arrange the electric connection from the outside source for electrification of their colony from Haryana Vidhyut Parsaran Nigam/Dakshin Haryana Bijlee Vitran Nigam Limited, Haryana. The installation of electricity distribution infrastructure as per the peak load requirement of the colony shall be the responsibility of the colonizer, for which the colonizer will be required to get the "electric(distribution) services plan/estimates" approved from the agency responsible for installation of "external electrical services" i.e., Haryana Vidhyut Parsaran Nigam/Dakshin Haryana Bijlee Vitran Nigam Limited, Haryana and complete the same before obtaining completion certificate for the colony.

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34. As far as external electrification charges are concerned, the respondent cannot collect the same from the allottees even though there is any provision in the builder buyer's agreement to the contrary as has already been laid down in complaint bearing no. 4031 of 2019 titled as "*Varun Gupta Vs. Emaar MGF Land Limited*" decided on 12.08.2021.

• **Duel Fuel DG Conversion Set amounting to Rs.1,663/-**

• **GMDA Water Charges amounting to Rs.5,000/-**

35. The DTCP has issued a clarification dated 31.01.2024 with regard to Clause 4(v) of the Affordable Group Housing Policy, 2013 in respect of the mandatory services to be provided by the colonizer/developer free of cost by the developer/colonizer in affordable housing colonies.

36. The Authority is of the view that the respondent-promoter can charge the maintenance/use/utility charges in terms of the clarification issued by the DTCP vide its office order dated 31.01.2024 in Clarification No. PF-27A/2024/3676.

• **User Charges amounting to Rs.25,659/-**

37. The Authority observes that no such amount is demanded by the respondent from the complainant vide the Offer of Possession dated 19.05.2024, thus the same is not adjudicated by the Authority.

• **Administration Charges of an amount of Rs.15,000/-**

38. The Authority is of the view that a nominal amount of up to Rs.15000/- may be charged by the promoter – developer for any expenses which it may have incurred for facilitating transfer as has been fixed by the DTP office in this regard. For any other charges like incidental and of like nature, since the same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged.

G.V Direct the respondent to provide all the requisite documents to the complainant such as Statement of Account for her unit.

39. In terms of Section 19(1) and 19(5) of the Act, 2016, the complainant is entitled to seek necessary documents from the respondent and the respondent is thus, directed to provide the requisite documents to the complainant within 30 days of this order.

H. Directions of the authority

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

- i. The respondent is directed to handover physical possession of the unit to the complainant within 30 days of this order.
- ii. The respondent is directed to pay the interest at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 30.05.2022 till offer of possession plus two months or actual handing over of possession after obtaining occupation certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- iii. The respondent is directed not to charge External Electrification Charges and Labour Cess from the complainant.
- iv. The respondent is directed to execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within 60 days of the order.

- v. The respondent shall not charge anything from the complainant which is not the part of the agreement.
41. Complaint stands disposed of.
42. File be consigned to registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 14.05.2025



HARERA
GURUGRAM