

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

Complaint no.: 113 of 2024
Date of complaint: 16.01.2024
Date of order: 15.05.2025

1. Dr. Manish Prakash
2. Dr. Deepa Aggarwal

Both R/O: - D-79 A, Doctors Residence,
Mayom Hospital, D Block, South City -1,
Gurugram-122007

Complainants

Versus

1. Y B Builders (Through its Managing
Director and other Directors)
Regd. Office: S. No.48, Basement, Vasant Lok,
Vasant Vihar, Opposite Mc Donald,
New Delhi, South West Delhi.

2. Nimai Developers (P)Ltd.
Regd. Office: 48, Vasant Lok Vasant Vihar
Delhi DI 110070
Also at Nimai House, SCO-304, Sector 29,
Gurugram, Haryana 122002.

Respondents

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Gaurav Rawat (Advocate)

Shri Sushil Yadav (Advocate)

Complainants
Respondents

ORDER

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

A



responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details.

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of the project	Nimai Palace, Sector 114, Gurugram
2.	Nature of project	Commercial
3.	RERA registered/not registered	Not registered
4.	DTPC License no.	126 of 2012 dated 20.12.2012
5.	Unit no.	715, 7 th floor (page 26 of complaint)
6.	Unit admeasuring	53.976 sq. mtr. (page 26 of complaint)
7.	Date of execution of buyer's agreement	13.10.2014 (page 25 of complaint)
8.	Building plan approval	18.06.2013 (submitted by respondent during proceedings dated 15.05.2025)
9.	Possession clause	26. <i>The Developer shall offer possession of the unit any time within a period of 36 months from the date of, sanction of building plans or date of execution of buyer's agreement whichever is later, subject to force-majeure circumstances such as act of God, fire earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy labour equipment facilities material or supplies, failures of transportation, strike, lock outs, action of labour union, any dispute with any contractor / construction agency appointed by the Developer, change of law, or any notice, order, rule or notification issued by any Courts/Tribunals and/or Authorities, delay in the grant of part / full completion (occupancy) certificate by the Government and/or any other public or competent authority or intervention of Statutory Authorities, or any other reason(s) beyond the control of the</i>

A✓

		<i>Developer. The Allottee(s) shall not be entitled to any compensation on the grounds of delay in offering possession due to reasons beyond the control of the Developer.</i>
10.	Due date of possession	13.10.2017 (calculated from the date of execution of buyer's agreement being later)
11.	Basic sale consideration	Rs.45,60,831/- (page 26 of complaint)
12.	Total amount paid by the complainant	Rs.53,84,904/- (as submitted by respondent during course of proceedings dated 15.05.2025 to which complainant has not raised any objection)
13.	Demand Letter	19.06.2013 (page 62 of complaint)
14.	Occupation certificate	10.02.2023 (submitted by respondent during proceedings dated 06.03.2025)
15.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That in year 2014, the respondent published advertisements through websites and newspapers for making attractive announcements regarding promotion, development and construction of proposed project in Nimai Developers Pvt. Ltd. and thereby invited applications from prospective buyers for the purchase of a studio apartment in the said project. Respondent confirmed that the project had building plan approval from the Authority. As per the builder buyer agreement dated 13.10.2014 by virtue of separate Development, management and marketing agreement dated 01.01.2013 the owners viz. YB Builders Pvt Ltd have assigned the rights to sell /market, develop, sign builder buyer agreement, manage and receive monies in its own name against sale of various units in the projects to Nimai Developers Pvt

- II. That relying on various representations and assurances given by the respondent the complainant paid consideration of Rs.55,88,523/- to purchase a studio apartment no.715 in at Nimai Place , Sector 114, Gurugram admeasuring super area of 581 sq. ft in the aforesaid commercial project @ Rs.7850/- per sq. ft. with one car parking without any sort of delay wherein possession to be offered with 36 months from date of sanction of building plan or execution of builder buyer agreement whichever is later i.e. on or before 12.10.2017.
- III. That the respondent subsequently transferred/endorsed the property in favour of the complainant vide builder buyer agreement dated 13.10.2013. The respondent executed a builder buyer agreement on 13.10.2013 in the favour of the complainant for an appropriate consideration. The total consideration paid by the complainant was according to the demands raised by the respondent.
- IV. That demand letter dated 19.06.23 issued by respondent to complainant demanding payments in an illegal manner. It was agreed that the respondent would pay to the complainant/allottee(s) Rs.10/- per sq. ft. per month on super area for any delay in offering possession as per the builder buyer agreement.
- V. That the respondents despite having made multiple tall representations to the complainant, the respondent has chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated allottee.
- VI. That the respondents have completely failed to honour their promises and have not provided the services as promised. Further, such acts of the respondent are also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.

A

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- I. Direct respondent for possession along with delay possession charges
- II. Direct the respondents not create any third-party rights or cancel the allotment of unit.
- III. Direct the respondents to provide the exact lay out plan of said unit.
- IV. Direct the respondents not to charge anything irrelevant which has not been agreed to between the parties like Labour Cess, electrification Charges, maintenance charges etc, which in any case is not payable by the complainants.
- V. Restrain the respondents from raising fresh demand(s) for payment under any head, as the complainants had already made payment as per the payment plan.
- VI. To take penal action against the respondents for violation of various provisions of the RERA Act, 2016

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

D. Reply by the respondent.

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

- i. That the complaint is neither maintainable nor tenable before this Authority and is liable to be out-rightly dismissed. The builder buyer agreement was executed between the complainants and the respondent prior to the enactment of the Act, 2016 and the provisions laid down in the said Act cannot be enforced retrospectively.
- ii. That there is no cause of action to file the present complaint. The present complaint has been filed pre-maturely by the complainants. Also, the complaint is not maintainable as the matter is referable to arbitration as per The Arbitration and Conciliation Act, 1996 in view of the fact that apartment buyer's agreement, contains an Arbitration Clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. Clause 57 of the apartment buyer's agreement,

12

- iii. That the complainant, after checking the veracity of the project namely, "Nimai Place", Sector 114, Gurugram had applied for allotment of a shop and were accordingly allotted shop number 715 o 7th floor having super built-up area of 581 square feet for a total sale consideration of Rs.62,16,341/-. The complainants agreed to be bound by the terms and conditions of the documents executed by them with the respondent.
- iv. That the complainant has failed to make timely payments as per the agreed payment plan. Despite numerous opportunities, reminders, and additional chances, the complainant has failed to fulfil their promise of paying the total consideration amount as mutually agreed upon and thus, with no fault on the part of the respondent.
- v. That the project in question has been completed by the respondent. Moreover, respondent have received the occupation certificate from the Director General, Town and Country Planning, Chandigarh, Haryana, vide letter dated 10.02.2023.
- vi. That the complainant has only paid Rs.53,84,904/- to the respondent for the subject unit whereas total sale consideration of the unit was Rs.62,16,341/-.
7. All other averments made in the complaint were denied in toto.
8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

10. 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

A✓

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

11. 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) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection w.r.t premature filing of the complaint.

13. The respondent, in its reply, has contended that the complaint was filed prematurely by the complainants. However, upon reviewing the documents on record, it is evident that the respondent obtained the occupation certificate for the project on 10.02.2023 over six years after the due date of possession, which was 13.10.2017. Moreover, the respondent has not made any formal offer of possession to the complainants, despite having received payment from them for the unit. The complainants filed the present complaint on 16.01.2024,

A

seeking delayed possession interest and possession of their unit and other reliefs after the issuance of the occupation certificate by the competent authority. Therefore, the complaint cannot be considered premature, and the respondent's objection in this regard is rejected.

F.II Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

14. The contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the plot buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** which provides as under:

119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity

of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

15. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

16. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the plot buyer's agreement has been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondents w.r.t. jurisdiction stands rejected

F.III Objection regarding agreements contains an arbitration clause which refers to the dispute resolution system mentioned in agreement.

17. The respondents submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute.
18. The authority is of the opinion that the jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on the catena of judgments of the *Hon'ble Supreme Court*, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

G. Relief sought by the complainants.

G.I Direct respondent for possession along with delay possession charges

19. In the present complaint the complainants intend to continue with the project and are seeking delay possession charges as provided under the Proviso to Section 18(1) of the Act. Section 18(1) Proviso reads as under:

"Section 18: - Return of amount and compensation

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

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

20. Clause 26 of the builder buyer agreement provides for handing over of possession and is reproduced below:

"26.

*The Developer shall offer possession of the unit any time within a period of 36 months from the date of, sanction of building plans or date of execution of buyer's agreement whichever is later, subject to force-majeure circumstances such as act of God, fire earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy labour equipment facilities material or supplies, failures of transportation, strike, lock outs, action of labour union, any dispute with any contractor / construction agency appointed by the Developer, change of law, or any notice, order, rule or notification issued by any Courts/Tribunals **and/or** Authorities, delay in the grant of part / full completion (occupancy) certificate by the Government and/or any other public or competent authority or intervention of Statutory Authorities, or any other reason(s) beyond the control of the Developer. The Allottee(s) shall not be entitled to any compensation on the grounds of delay in offering possession due to reasons beyond the control of the Developer."*

(Emphasis supplied)

21. **Due date of handing over of possession:** As per possession clause 26 of the agreement dated 13.10.2014 the possession of the unit was to be handed over within 36 months from the date of sanction of building plans or execution of agreement whichever is later. Date of sanction of building plans was 18.06.2013 and the date of execution of agreement was 13.10.2014 so, the due date is calculated from the date of agreement being later. Therefore, the due date of possession of the unit comes out to be 13.10.2017

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

The complainants are seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules, *ibid*. Rule 15 has been reproduced as under:

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



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

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

23. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, ibid has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said Rule is followed to award the interest, it will ensure uniform practice in all the cases.

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., 15.05.2025 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. 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—

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 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;"

26. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

27. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of buyer's agreement executed between the parties, the possession of the booked unit was to be delivered within 36 months from the date of sanction of building plans or date of execution of buyer's agreement whichever is later. The builder buyer agreement was executed between the parties on 13.10.2014 whereas the building plan was approved on 18.06.2013. Therefore, the date of date of execution builder buyer agreement being later, the due date of possession was calculated from the date of builder buyer agreement. Accordingly, the due date of possession comes out to be 13.10.2017. Occupation certificate was granted by the concerned authority on 10.02.2023. Copy of the same has been placed on record.
28. The counsel for the complainants during proceedings dated 15.05.2025 submitted that no formal offer of possession has been issued by the respondent. On contrary the counsel for the respondent submitted that offer of possession has already been made in April 2023 and possession is not yet handed over due to non-payment of outstanding amount. Upon perusal of the documents on record submitted by both the parties the it has been found that respondent has not placed on record any document w.r.t to the offer of possession made in respect of the subject unit.
29. Further, the counsel for the complainant during proceedings dated 15.05.2025 submitted that the both the respondents are jointly and severally liable as the payment was made to the YB Builders Pvt. Ltd. and agreement was been executed by Nimai Developers Pvt. Ltd. R2. The Authority observes that in the present complaint, it is evident that Nimai Developers Private Limited executed the agreement with the complainant. In addition, YB Builders Private Limited holds the requisite license pertaining to the subject project. In view thereof,

both Nimai Developers Private Limited and YB Builders Private Limited are jointly and severally liable.

30. Accordingly, it is the failure of the both promoters to fulfil its obligations and responsibilities as per the agreement dated 13.10.2014 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to Section 18(1) of the Act on the part of the respondents is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 13.10.2017 till offer of possession plus 2 months or actual handing over of possession whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules.

31. The occupation certificate for the tower in question has already been obtained by the respondent on 10.02.2023. Therefore, the respondents/promoter are directed to handover possession of the unit to the complainants and to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.

G.II Direct the respondents not create any third-party rights or cancel the allotment of unit.

32. The counsel for the respondent during proceedings dated 15.05.2025 submitted that the respondent is willing to handover the possession of the subject unit to the complainant. Further, as per the documents on record it is evident that the complainant has already paid Rs.53,84,904/- against the sale consideration of Rs.53,72,230/- which is more than the agreed sale consideration. Furthermore, more than six years later from the due date of possession, the respondent obtained the occupation certificate from the competent authority on 10.02.2023. The interest accrued during the delay period significantly reduces the amount payable by the complainant if any.

Upon adjustment of this interest, the respondent would, in fact be liable to pay the complainant. In view of the above submissions and findings the respondent is directed respondents not create any third-party rights nor cancel the allotment of the subject unit.

G.III Direct the respondents to provide the exact lay out plan of said unit.

33. As per Section 19(1) of the Act, the allottees are entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in this Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Therefore, in view of the same, the respondent is directed to provide details i.e., actual area of the subject unit in question to the complainants within a period of 30 days from the date of this order.

G.IV Direct the respondents not to charge anything irrelevant which has not been agreed to between the parties like Labour Cess, electrification Charges, maintenance charges etc, which in any case is not payable by the complainants.

G.V Restrain the respondents from raising fresh demand(s) for payment under any head, as the complainants had already made payment as per the payment plan.

34. 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 complainant. 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,

the demand of labour cess raised upon the complainants is completely arbitrary and the complainants 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.

35. As far as external electrification charges are concerned, the respondent cannot collect the same from the allottees while issuing offer of possession letter of a unit 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.
36. The respondent is allowed to collect a reasonable amount from the complainants on account of the maintenance charges with respect to IFMSD 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. However, the authority directs that the promoter must always keep the amount collected under this head in a separate bank account and shall maintain that account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFMSD amount and the interest accrued thereon, the promoter must provide details to the allottee. It is further clarified that out of this IFMSD/IBMS, no amount can be spent by the promoter for the expenditure it is liable to incur to discharge its liability and obligations as per the provisions of Section 14 of the Act.
37. The respondent is further directed that it shall not charge anything from the complainants which is not the part of the buyer's agreement.

G.VI To take penal action against the respondents for violation of various provisions of the RERA Act, 2016.

38. The Authority cannot deliberate on the above sought relief since the complainants have failed to enumerate the specific defaults being committed

by the respondent in their complaint and the pleadings under which the respondent-promoter shall be penalised.

H.Directions of the Authority

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

- i. The respondent no.1 and 2 are directed to pay interest to the complainants against the paid-up amount at the prescribed rate i.e., 11.10% p.a. for every month of delay from the due date of possession i.e., 13.10.2017 till offer of possession plus 2 months or actual handing over of possession, whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules;
- ii. The arrears of such interest accrued from 13.10.2017 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the Rules.
- iii. The respondents/promoter are directed to supply a copy of the revised statement of account after adjusting delay possession charges within a period of 30 days to the complainants.
- iv. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 60 days from the date of receipt of updated statement of account.
- v. The respondents/promoter are directed to handover possession of the unit to the complainants and to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016



on payment of stamp duty and registration charges as applicable within three months.

vi. The respondents/promoter shall not charge anything from the complainants which is not the part of the apartment buyer's agreement dated 13.10.2013.

vii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondents/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delay possession charges as per section 2(za) of the Act.

40. Complaint stands disposed of.

41. File be consigned to registry.

Dated: 15.05.2025


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory
Authority, Gurugram