

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

Complaint no.: 3199 of 2024
Date of filing of complaint: 11.07.2024
Date of Order: 03.04.2025

Dinesh Lamba
R/o: H. No.-2798, H.B Colony,
Sector-3, Ballabhgarh, Faridabad,
Haryana-121004

Complainant**Versus**

MVN Infrastructure Private Limited,
Regd. Office at: 58A/1, 1st Floor,
Kalu Sarai, New Delhi-110016

Respondent**CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Sh. Manish Janghu (Advocate)
Sh. Lokesh Dixit (Advocate)

**Complainant
Respondent****ORDER**

1. The present complaint dated 11.07.2024 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 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 and location of the project	"MVN Athena Sohna", Village- Sohna, Sector-5, Sohna, Gurugram
2.	Nature of the project	Affordable Group Housing
3.	Project area	6.50625 acres
4.	DTCP license no.	49 of 2014 dated 18.06.2014 valid up to 17.02.2026
5.	Name of licensee	M.V.N. Infrastructure Pvt. Ltd.
6.	RERA Registered/ not registered	284 of 2017 dated 10.10.2017 valid up to 09.10.2021
7.	Unit no.	A2-008, Ground floor & Tower-A 2 (As per page no. 20 of the complaint)
8.	Revised unit no.	503, 5 th floor & Tower-8 (As per page no. 40 of the complaint) (Note: Unit no. has been revised to 503, 5 th floor from A2-008, ground floor vide addendum to flat buyer's agreement)
9.	Unit area	343.9098 sq. ft. (Carpet Area) (As per page no. 20 of the complaint)
10.	Revised unit area	340.099 sq. ft. (Carpet area) and 102.968 (Balcony area) (As per page no. 40 of the complaint) (Note: Unit area has been revised to 340.099 sq. ft. from 343.9098 sq. ft. vide addendum to flat buyer's agreement)
11.	Date of approval of building plans	05.09.2014 (As per page no. 19 of the complaint)
12.	Date of Environment Clearance	05.01.2015 (As per page no. 4 of the reply)
13.	Allotment letter	06.02.2015 (As per page no. 17 of the complaint)
14.	Date of execution of flat buyer's agreement	19.02.2015 (As per page no. 5 of the reply)
15.	Addendum to flat buyer's agreement	16.03.2016 (As per page no. 39 of the complaint)

16.	Possession clause	<p>3. Possession</p> <p><i>3.1 Subject to force majeure circumstances, intervention of statutory Authorities, receipt of occupation certificate and allottee having timely complied with all its obligations, formalities or documentation, as prescribed by company and not being in default under any part hereof and flat buyer's agreement, including but not limited to the timely payment of installments of the other charges as per the payment plan, stamp duty and registration charges, the company proposes to offer possession of the said flat to the allottee within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "commencement date"), whichever is later, subject to the allottee has executed the flat buyer's agreement. (As per page no. 24 of the complaint)</i></p>
17.	Due date of possession	<p>05.01.2019</p> <p>(Note: Due date to be calculated four years from the date of environment clearance i.e., 05.01.2015, being later)</p>
18.	Payment plan	Construction linked payment plan
19.	Total sale consideration	<p>Rs.13,45,365/- (including taxes)</p> <p>(As per SOA dated 06.11.2024 on page no. 73 of the reply)</p>
20.	Amount paid by the complainant	<p>Rs.6,52,889/-</p> <p>(As per SOA dated 06.11.2024 on page no. 73 of the reply)</p>
21.	Email seeking the procedure for surrender of the unit and refund of the paid-up amount	<p>27.05.2019</p> <p>(As per page no. 42 of the complaint)</p>
22.	Occupation Certificate	<p>29.05.2019</p> <p>(As per page no. 43 of the reply)</p>
23.	Offer of possession	<p>07.06.2019</p> <p>(As per page no. 43 of the complaint)</p>

24.	Demand letters	07.07.2016, 23.08.2016, 05.12.2016, 06.01.2017, 08.03.2017, 06.07.2017, 30.10.2017, 11.11.2017, 06.01.2018, 25.07.2018, 07.12.2018, 09.10.2019 & 29.04.2023 (As per page no. 50-63 of the reply)
25.	Reminder letter	07.10.2019 (As per page no. 66 of the reply)
26.	Final notice of demand cum termination	01.05.2023 (As per page no. 69 of the reply)
27.	Publication in various newspapers for payment of outstanding dues	02.05.2023 (As per page no. 72 of the reply)
28.	Cancellation of allotment	28.08.2023 (As per page no. 46 of the complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions:

1. That the respondent/promoter/developer claim itself as reputed builder and developer. The respondent gave advertisement in various leading newspapers about their forthcoming project named "MVN Athens Sohna" an affordable group housing colony situated at revenue estate of village-Sohna, Sector-5, Sohna, Gurugram promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements the complainant filed an application dated 03.10.2014 for purchasing a flat in the affordable group housing colony named "MVN Athens Sohna" situated at revenue estate of village Sohna, Sector-5, Sohna, Gurugram. The complainant had duly paid the booking amount of Rs.63,000/- and till date the complainant had paid a total amount of Rs.6,52,889/- only against the sale

consideration of rs.12,53,964/- which includes BSP, EDC, IDC etc. and taxes.

- II. That the respondent has allotted, unit no. A2-008, in tower A-2, having carpet area of 343.909 sq. ft. on ground floor together with the two wheeler parking site to the complainant vide draw held on 04.02.2015 and the respondent had duly sent the allotment letter dated 06.02.2015 to the complainant and the buyer's agreement was executed on 19.02.2015.
- III. That thereafter the complainant executed an addendum to flat buyer's agreement dated 16.03. 2016, wherein the complainant and the respondent were agreed on the following two changes:
 - a. The complainant was allotted an apartment bearing Flat no. 503 in Block/Tower 8, 5th Floor, having carpet area of 340.099 sq. ft. and balcony of 102.968 sq. ft. at its group housing colony namely "MVN Athens Sohna" revenue estate of village Sohna, Sector-5, Sohna, Gurugram, Haryana, (recital H of builder buyer agreement), and
 - b. The total sale consideration of Rs.12,75,840/- is to be paid by the complainant to the respondent . (clause 2.1 of flat buyer's agreement)
- IV. The addendum agreement dated 16.03.2016 contains only these two changes with rest of the conditions of the flat buyer's agreement dated 19.02.2015 remaining to be same.
- V. That as per clause 3.1 of the buyer's agreement dated 19.02.2015 the respondent had to hand over the possession of the unit to the complainant in 4 years from the date of approval of building plans i.e., 05.09.2014. That the respondent had to deliver the possession of the booked unit to the complainant till 04.09.2018.

- VI. That due to some financial constraints the complainant failed to make due payments and in December 2016 demanded refund from the respondent by conveying his desire to withdraw from the project but the respondent had not obliged the demand of the complainant and delayed and dragged the matter on one pretext or the other.
- VII. That the respondent miserably failed to comply the legal mandate of returning money of allottee/buyers on demand made by them and instead the respondent kept on issuing illegal demand letters to the complainant for payment of installments. The complainant had finally on 27.05.2019 sent an email to the respondent demanding refund as the complainant wanted to withdraw from the project but still the respondent gave no reply to the said e-mail till date. Thereafter the complainant had written several email dated 08.08.2019 and 23.08.2019 to the respondent and also called multiple times to the respondent's office, and also visited the office of the respondent to seek refund but every time the respondent made lame excuses and delayed and dragged the matter without paying a single penny.
- VIII. That ignoring the continuous requests of the complainant for refund, the respondent to the utter shock of the complainant had sent the offer of possession letter dated 07.06.2019. That the complainant had still rigorously followed the respondent's representatives to cancel the allotment of the apartment and refund of the amount paid but all the efforts of the complainant goes in vain due to complete lack of cooperation of the respondent.
- IX. That to the utter surprise of the complainant, he received a demand cum termination letter dated 01.05.2023 from the respondent wherein the respondent had illegally demanded an amount of

Rs.13,39,751/- from the complainant. This demand cum termination letter is completely unjustified and unwarranted due to the fact that the complainant had already withdrawn from the project since December 2016 and it was duly intimated from time to time to the respondent. Instead of refunding the amount of the complainant the respondent is issuing illegal demand letters to the complainant by adding heavy interest which is totally unjustified in the fact circumstances.

- X. That the complainant had duly replied to the demand cum termination letter dated 01.05.2023 by sending his reply on 28.08.2023 mentioning that the refund requests of the complainant has not been complied with till date. The respondent had miserably failed to accede the reasonable demand of the complainant.
- XI. That thereafter the complainant has multiple times visited the office of the respondent and asked to cancel the unit and refund the paid amount but the respondent did not pay any heed to the just and reasonable demands of the complainant and instead the respondent kept on misleading the complainant. It is pertinent to mention that the respondent misused its dominant possession and used the hard-earned money of the complainant for its own profit.
- XII. That the apartment in dispute is part of the project developed by the respondent under the Haryana Affordable Housing Policy, 2013 and under the terms of the said policy, upon default on the part of the allottee and upon cancellation the respondent/promoter may deduct only 2% amount of the total cost of the apartment and is liable to refund the balance amount along with applicable interest.

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- XIII. That the respondent has registered its project "MVN Athens" with the Hon'ble Authority and has obtained the RERA Registration bearing no. 284 of 2017 on 10.10.2017.
- XIV. That the complainant had invested his hard earned money in the project and the complainant wants to withdraw from the project. Such hopes and dreams of the complainant was quashed by the default committed by the respondent in not refunding the amount timely and as such the complainant lost faith in the respondent and wants to withdraw from the said project and wants refund of the whole amount paid to the respondent.
- XV. That due to this omission on the part of the respondent, the complainant suffered from disruption on their living arrangement, mental torture, agony and also continues to incur severe financial losses for which the respondent is liable to pay Rs.2,00,000/- to the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent to refund the paid-up amount of Rs.6,52,889/- received from the complainant along with the interest.
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:
- That the respondent had constructed and developed affordable group housing project named "MVN Athens Sohna" on the land admeasuring

6.50625 acres situated in Sector-5 of Revenue Estate of Sohna, District Gurugram.

- II. That the respondent was granted license no. 49 of 2014 dated 18.06.2014, in prescribed form for development of group housing colony, over the project land. Upon the grant of aforesaid license, the zoning plan was approved vide drawing no. DGTCP-4724 by the competent authority. Thereafter, building plans were approved on 05.09.2014. Then, the respondent applied for obtaining prior Environmental Clearance of the project, vide application dated 29.08.2014 and the same was granted on 05.01.2015.
- III. That the complainant applied for the allotment of a flat in the above-mentioned project of the respondent vide application dated 03.10.2014. As per the applicable rules the concerned government department/agency has to carry out a draw of lots for the allotment of the unit in the project.
- IV. That pursuant to the draw of lots held on 04.02.2015, the complainant was allotted flat no. A2-008 on the ground floor in Block/Tower A-2 having 343.909 sq. ft. along with the two wheeler parking for a total consideration of Rs.12,53,964/-. In pursuance of the said allotment, parties entered into flat buyer's agreement dated 19.02.2015.
- V. That during the execution of its obligations under the license it had come to the notice of the respondent that certain works were being carried out on the land near the project, for erection of two electrical poles for the installation of High Tension lines. The location of these electrical poles was such that in the event the HT lines had to connect the two poles, the HT lines would have run through a portion of the project, that too in a manner that it would have come in the way of the

buildings that were planned and approved to be constructed over the said project land. This state of affairs could not have been allowed considering the wellbeing and health related issues of the allottees of the project as any HT Line passing over the edifice of the allottees would have played havoc with their health and life.

- VI. That under such emergent and pressing circumstances, the respondent approached the Haryana Vidyut Prasaran Nigam Limited ('HVPNL') and other relevant/concerned authorities by way of various correspondences to change the alignment of the HT lines running through the project. The respondent had even met the officials of the Department of Town and Country Planning as license and all necessary approvals had been granted by this department, apprising them of the milieu in which the respondent had got embroiled. But the said requests were not acceded to and the respondent was granted no relief by HVPNL or any other authority. Apparently, there was a direct conflict between the obligations of the respondent and the health and safety of the allottees of the project.
- VII. That in this backdrop, the respondent being left with no other alternative filed Civil Writ Petition No.18929 of 2014 before the Hon'ble Punjab and Haryana High Court. In the reply, while acknowledging the fact that the High Tension wires would affect the project, it was *inter-alia*, stated that if the realignment of the proposed electric poles cannot be avoided by the executing agency, the respondent herein could get the zoning plans and building plans revised from the office of said department so as to avoid passing of High Tension wires over the buildings proposed to be constructed by the respondent.

- VIII. That accordingly, the respondent, under such force majeure circumstance, submitted request for revision of the building plan(s)/zoning plan(s) on 13.07.2015 and the revision was approved provisionally on 12.08.2015, for the purpose of inviting objections/suggestions. After considering all the objections raised against such provisional approval with to respect to revision of the building plan(s) the revised building plans were approved on 16.05.2016. The complainant did not submit any objection to the revision of building plans and, as a matter of fact, the complainant has not made further payments even after the aforesaid revision of the plan.
- IX. That the necessity to revise the building plans arose due to circumstances beyond the control of the respondent and in the interest of the allottees which amounted to force majeure conditions and consequently the area of the flat allotted to the complainant had got changed and the towers that were earlier marked alphabetically were then marked numerically.
- X. That thereafter, in the writ petition then pending before the Hon'ble High Court, the respondent had submitted that due to the process involving the change and revision of the building plan certain period has elapsed during which the respondent could not continue the development of the project and therefore prayed that such period which was lost during this period in the interregnum be removed from the limited time of completion provided under the policy. Considering the plea of the respondent the Hon'ble High Court disposed of the said writ petition vide order dated 26.07.2017 with a direction thereby granting liberty to the respondent to make a

representation before the Department of Town and Country Planning in that regard.

- XI. That accordingly, the respondent submitted its representation and the Department of Town and Country Planning considered the same on merits. It was duly noticed by the Director, Town and Country Planning, Haryana while deciding the representation of the respondent that the project of the respondent had been stalled for approximately a period of one year and eight months, for reasons beyond the control of the respondent. The department therefore legally ordered to consider the period from 05.09.2014, to 16.05.2016, to be treated as zero period for the purposes of commencement of project and extension in the period of the license. The said order was passed on the basis of the undisputed facts and applicable law as the respondent was prevented from undertaking development works of the said project due to installation of HT Line by HVPNL. It was duly appreciated in the said order that in case the development works were executed by the respondent, as per the original approved building plans, the HT Line would have passed through the constructed area putting the life of the inhabitants at risk. Needless to mention that as per the said direction of the Competent Authority, the date of commencement of the project shall be deemed as 16.05.2016.
- XII. That as per the new revised building plan the area of the flat allotted to the complainant revised to 340.099 sq. ft. from the original 343.90 sq. ft. and total sale consideration was also revised to Rs.12,75,840/-. The complainant accepted the aforesaid changes and signed an addendum dated 16.03.2016 to the builder buyer's agreement dated 19.02.2015. It is pertinent to mention here that due to the revision in



the building plan, the tower numbers in the project were changed from alphabetical to the numerical and a clarification note dated 02.06.2016 was issued by the respondent in this regard.

- XIII. That the application dated 03.12.2018 for granting of occupation certificate with respect to the first phase of the project has been duly accepted by the concerned department and Occupancy Certificate for the first phase of the project for the towers 5-10 of the project has been granted on 29.05.2019. The said OC has been granted much prior to the actual date of completion prescribed under the policy i.e., almost one year before the permitted time of completion under the policy. However, due to spread of ongoing COVID-19 pandemic the State Government as well as the Authority has granted various concessions to the home buyers as well as the developers. The Authority has specifically extended the completion date of all the projects by 6 months vide its notification bearing No.9/3-2020 dated 26.05.2020.
- XIV. That, as per the orders of the Authority the project was required to be completed on or before 15.11.2020. Therefore, there has been no delay on the part of the respondent and the unit of the complainant has been offered almost one and a half year before time.
- XV. That the respondent has issued various demand notices in terms of the payment plan approved under the Affordable Housing Policy 2013 and thereby requested for the payment of due installments however, the complainant willfully failed/neglected to make timely payment to the respondent. The complainant was duly notified that timely payment of due installment is the essence of the agreement and any delay in payment will attract interest @15% per annum as notified under the Government Policy.

- XVI. That the occupation certificate of the tower in which the unit of the complainant is situated has already been granted and pursuant to the said OC the respondent has already issued offer of possession vide letter dated 07.06.2019. The said unit has been completed almost one and a half year before the completion date and the complainant himself has breached the terms of the allotment by not making the payment as per the payment plan.
- XVII. That the flat is ready in all aspects and respondent have issued several reminders to the complainant for taking physical possession of the unit after clearing all the dues. However, no steps were taken by the complainant contrary to the complainant is raising false and frivolous grounds with a view to arm twist the respondent.
- XVIII. That the complainant has never ever made any demand regarding cancelling his allotment of flat prior to 27.05.2019. On 27.05.2019, the complainant has himself sent an email inquired about the procedure required for cancellation of the unit on the ground of his inability to make payment due to financial constrain. The complainant has been clearly intimated that as the occupancy certificate has already been granted to the respondent, the complainant is required to make the payment on immediate basis and complete the transaction but in vain. It is further intimated to the complainant that if the complainant is not interested in taking the possession of the unit for any reason whatsoever then it is free to exercise his right to surrender the allotment and seek refund as per law. However, the complainant failed to surrender his flat in the prescribed manner.
- XIX. That while issuing the letter dated 07.06.2019 offering possession to the complainant, the respondent had made clear demand from the complainant to take possession and pay the entire outstanding till

date. The complainant was further informed that even if the possession has not been taken by the complainant within 15 days, he shall have to bear the proportionate cost of the user charges cum operation cost, however the complainant has neither made the previous outstanding payment nor had taken possession and made payment of the operating cost even repeated reminders.

- XX. That the complainant failed to take possession and make complete payment in terms of the offer of possession, the respondent had issued final notice of demand cum termination notice dated 01.05.2023 to the complainant.
- XXI. That in compliance of the terms of the Affordable Housing Policy, 2013, the respondent had granted further opportunity to the complainant to make payment to survive his allotment while publishing his name in the newspaper on 02.05.2023. However, the complainant failed to make the payment this time again and make the respondent bound to cancel his allotment.
- XXII. That when the complainant failed to make the outstanding payment within the given time of 15 days from the date of newspaper publication his allotment was cancelled and the agreement to sale was terminated by the respondent strictly as per the Affordable Housing Policy and the complainant was called upon to receive the balance amount. Instead of receiving the balance amount, the complainant, had demanded the entire amount he had made to the respondent company and had filed this complaint.
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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

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

E.I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

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

Section 11.....

(4) 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.

9. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be

decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on objections raised by the respondent:

F.I Objection regarding force majeure conditions:

10. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as certain environment restrictions, revision of zoning plans and layout plans due to HT line passing through the project, orders of various courts, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour, increase in cost of construction material and non-payment of instalments by different allottees of the project, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and the promoter is required to take the same into consideration while launching the project. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is earlier. In the present case, the date of approval of building plans is 05.09.2014 and date of grant of Environmental Clearance is 05.01.2015. Thus, the due date of subject unit is to be calculated from the date of environmental clearance i.e.,

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05.01.2015, being later which comes out to be 05.01.2019. **Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.** The authority put reliance judgment of Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020* dated 29.05.2020 which has observed that:

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

11. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 05.01.2019 i.e., before 25.03.2020. Therefore, an extension of 6 months is not to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. The due date of subject unit comes out to be 05.01.2019, prior to the occurrence of Covid-19 restrictions and hence, the respondent cannot be benefitted for his own wrong. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on the relief sought by the complainant:

- G.I Direct the respondent to refund the paid-up amount of Rs.6,52,889/-received from the complainant along with the interest.
12. The complainant was allotted a unit in the project of respondent "MVN Athens Sohna", in Sector-5, Sohna, Gurugram vide allotment letter dated 06.02.2015 for a total sum of Rs.13,45,365/- including taxes. A flat buyer's agreement was executed between the parties on 19.02.2015 and

the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.6,52,889/-. As per clause 3.1 of the buyer's agreement dated 19.02.2015, the possession of the apartment is to be delivered within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. Clause 3.1 of the buyer's agreement dated 19.02.2015 is reproduced below for ready reference:

3. Possession

3.1 Subject to force majeure circumstances, Intervention of statutory Authorities, receipt of occupation certificate and allottee having timely complied with all its obligations, formalities or documentation, as prescribed by company and not being in default under any part hereof and flat buyer's agreement, including but not limited to the timely payment of installments of the other charges as per the payment plan, stamp duty and registration charges, the company proposes to offer possession of the said flat to the allottee within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "commencement date"), whichever is later, subject to the allottee has executed the flat buyer's agreement.

(Emphasis supplied)

13. The due date of possession is to be calculated 4 years from the date of environment clearance i.e., 05.01.2015. Therefore, the due date of possession comes to 05.01.2019.
14. In present complaint, the relief sought by the complainant in the complaint is of refund as per the provisions of the Act of 2016, as the complainant intends to withdraw from the project. As per the documents placed on record with the complaint, the Authority observed that the unit is cancelled on 28.08.2023 i.e., way before the filing of the present complaint.
15. The counsel for the complainant vide proceedings of the day dated 03.04.2025 stated that the complainant intends to withdraw from the project and requests for the same has been made vide email dated 27.05.2019. However, the counsel for the respondent brought to the

notice of the Authority that vide email dated 27.05.2019, the complainant has asked for the procedure to surrender the unit. Moreover, the occupation certificate of the project was received on 29.05.2019 and thereafter the respondent has issued offer of possession on 07.06.2019. He further stated that the complainant has paid only 45% of the total sale consideration till date and the respondent has cancelled the unit of the complainant vide letter dated 28.08.2023 on account of non-payment by the complainant. Though the respondent has issued various demand letters for payment for outstanding dues but the complainant never paid any heed to the same and till date paid an amount of Rs.6,52,889/- only against the consideration of Rs.13,45,365/-. The respondent has duly followed the due procedure as per the Affordable Housing Policy, 2013 and after issuing reminder letter as well as final demand cum termination notice dated 01.05.2023 made a publication in the newspaper on 02.05.2023 but the complainant failed to pay the outstanding dues. Thereafter, the respondent cancelled the allotment of the unit of the complainant vide cancellation letter dated 28.08.2023.

16. The cancellation of the unit stands valid as the respondent cancelled the unit after following the due procedure prescribed under Affordable Housing Policy, 2013. Thus, the relief of refund sought by the complainant can be provided as per clause 5(iii)(i) (Inadvertently mentioned as clause 5(iii)(b) in proceedings of the day dated 03.04.2025) of Affordable Housing Policy, 2013 in case any successful applicant fails to deposit the instalments within the stipulated time. In such case, an amount of Rs.25,000/- can be forfeited by the colonizer and the balance amount shall be refunded to the applicant-allottee. Relevant portion of clause 5(iii)(i) of the Affordable Housing Policy, 2013 is reproduced below for ready reference:

- i. *If any successful applicant fails to deposit the instalments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due instalments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi news-paper having circulation of more than ten thousand in the State for payment of due within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs.25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant.*
17. In the present case, the complainant has failed to pay the due instalments even after issuance of demand letter, reminder letter, pre-cancellation and publication in the newspaper. Keeping in view the aforementioned factual and legal provisions, the respondent can retain the amount paid by the complainant against the booked unit as per clause 5(iii)(i) of Affordable Group Housing Policy, 2013 i.e., Rs.25,000/-.
18. The prescribed rate of interest as per Rule 15 of Rules, 2017 payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent.
19. The authority hereby directs the promoter to return the amount received by him i.e., Rs.6,52,889/- after deducting the amount of Rs.25,000/- as per above-mentioned clause of Affordable Group Housing Policy, 2013 along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation i.e., 86.08.2023 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H.Directions of the Authority:

20. 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 /promoter is directed to refund the amount i.e., **Rs. 6,52,889/-** received from the complainant-allottee after deducting the amount of Rs.25,000/- as per clause 5(iii)(i) of Affordable Group Housing Policy, 2013 along with interest on such balance amount at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation i.e., 28.08.2023 till the actual date of refund of the amount.
- ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

21. Complaint stand disposed of.

22. File be consigned to registry.


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.04.2025