



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

<b>Complaint no.:</b>	<b>2401 of 2022</b>
<b>Date of filing:</b>	<b>12.09.2022</b>
<b>Date of first hearing:</b>	<b>08.02.2023</b>
<b>Date of decision:</b>	<b>24.04.2025</b>

Manish Gadodia S/o Late Sh. Shyam Sunder Gadodia  
R/o House No. 882-A, Kedar Building Ghanta Ghar  
Old Sabzi Mandi, Delhi- 110007

....COMPLAINANT(S)

VERSUS

Express Projects Pvt Ltd  
810, Surya Kiran, 19, Kasturba Gandhi Marg,  
Connaught Place, New Delhi- 110001

....RESPONDENT(S)

<b>Complaint no.:</b>	<b>2402 of 2022</b>
<b>Date of filing:</b>	<b>12.09.2022</b>
<b>Date of first hearing:</b>	<b>08.02.2023</b>
<b>Date of decision:</b>	<b>24.04.2025</b>

Anil Gadodia S/o Late Sh. Shyam Sunder Gadodia  
R/o House No. 882-A, Kedar Building Ghanta Ghar  
Old Sabzi Mandi, Delhi- 110007

....COMPLAINANT(S)

VERSUS

Express Projects Pvt Ltd  
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**CORAM:**                      **Parneet Singh Sachdev**                      **Chairman**  
                                     **Nadim Akhtar**    **Member**  
                                     **Chander Shekhar**    **Member**

**Present: -**                      Ms. Priyanka Aggarwal, Counsel for the complainants through VC in both cases.  
                                     Mr. Kamaljeet Dahiya, Counsel for the respondent through VC in both cases.

**ORDER (PARNEET S. SACHDEV-CHAIRMAN)**

1. Captioned complaints are taken up together for hearing as they involves same issues pertaining to same project-‘Express City, Sonipat’ and against one respondent only. This order is passed taking complaint no. 2401/2022-Manish Gadodia vs Express Projects Pvt Ltd as lead case.
2. Present complaint was filed on 12.09.2022 by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.



**A. UNIT AND PROJECT RELATED DETAILS**

3. The particulars of the project, the details of 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 table:

S.No.	Particulars	Details of complaint no. 2401/2022	Details of complaint no. 2402/2022
1.	Name of the project	Express City, Sonipat	Express City, Sonipat
2.	RERA registered/not registered	Un-Registered.	Un-Registered.
3.	DTCP License no.	261 of 2007 dated 20.11.2007	261 of 2007 dated 20.11.2007
	Licensed area	100.63 acres	100.63 acres
4.	Unit (Plot) no.	87, Block-B	87, Block-B
5	Unit area	402 sq. yds.	402 sq. yds.
6.	Date of booking	18.03.2006	20.06.2012
7.	Date of plot buyer agreement	20.06.2012	20.06.2012
8.	Due date of offer of possession (36 months)	20.06.2015	20.06.2015



9.	Possession clause	<p>Clause 34</p> <p>The seller shall handover the possession of the plot to the buyer within 3 years of the date of this agreement (except the services to be given by the government). If the possession is delayed except on account of force majeure, the Seller shall pay Rs 3/- per sq. yd. per month as penalty charges provided the Buyer has made full and timely payments as per the agreed Schedule of Payment. If the purchaser fails to take possession of the plot after receipt of the intimation for the same, the seller shall charge holding charges from the purchaser @ Rs 3/- sq. yd. per month.</p>	<p>Clause 34</p> <p>Same as of 2401/2022</p>
10.	Basic sale consideration	₹ 28,14,000/-	₹ 28,14,000/-
11.	Amount paid	₹ 35,57,700/-	₹ 35,57,700/-



	by complainant		
12.	Offer of possession	22.07.2013	22.07.2013
13.	Date of Completion Certificate	05.08.2013	05.08.2013

### B. FACTS OF THE COMPLAINT (as per complaint)

4. "Facts of complaint are that complainant had booked a plot in present and future project of the respondent by making payment of Rs 1,00,000/- on 18.03.2006. Copy of receipt is attached as Annexure C-2. Thereafter, respondent confirmed the booking of complainant by providing details of project and allotted plot no.87, Block-B for a total sale consideration of Rs 36,98,400/-.
5. That after repeated requests by complainant, the respondent after delay of more than six years got the Plot buyer agreement executed on 20.06.2012. Copy of plot buyer agreement is annexed as Annexure C-1. As per clause 34 of said agreement, the possession of the plot was supposed to be delivered within 3 years, i.e. upto 20.06.2015. In total, complainant has already paid an amount of Rs 35,57,700/-. Copy of payment receipts are annexed as Annexure C-2 (colly).



6. It is pertinent to mention here that the complainant having dream of its own plot in NCR signed the agreement in the hope that the unit will be delivered within 36 months from the date of agreement. The complainant was also handed over one detailed payment plan which was construction linked plan. It is unfortunate that the dream of owning a unit of the complainant was shattered due to dishonest, unethical attitude of the respondent. During the period 2013-2021 the complainant went to the office of respondent several times and requested them to allow them to visit the site but it was never allowed saying that they do not permit any buyer to visit the site during construction period.
7. That complainant after many repeated request and emails received the possession letter on 22.07.2013. It is pertinent to note here that alongwith the above said letter of offer of possession respondent raised several illegal demands on account of the following which are actually not payable as per the plot buyer agreement: Advance monthly maintenance for 36 months of Rs 36,587/-, Legal charges of Rs 12,360/-, IFMS of Rs 80,400/- and club charges of Rs 56,180/-. Offering of possession by the respondent on payment of charges which the plot buyer is not contractually bound to pay cannot be considered to be a valid offer of possession. It would be noticed from the details provided above that those charges were never payable





by the complainant as per the agreement. It is beyond imagination to even understand how the respondent could obtain the Completion Certificate when the entire scheme has not been completed as per the plans approved by the Department of Town and Country Planning Haryana. Hence the present offer of possession is a premature offer of possession and how the completion certificate has been obtained without completing the construction is an issue of concern to the complainant.

8. That respondent in respect of the said unit has not received the Completion certificate till date. Hence, you without getting the Completion Certificate sent the offer of possession on 22.07.2013 which is bad in the eye of law and clearly shows the malafide intention on the part of you to cheat and extract the money from complainant. Thereafter, respondent sent reminder letters dated 02.09.2013, 10.10.2013, 18.11.2013, 05.07.2014, 7.07.2014, 10.10.2014, 17.10.2014, 12.12.2015, 07.04.2016, 04.07.2016 and 25.08.2017 to complainant and on the above mentioned reminder letter complainant kept requesting respondent to provide the copy of Completion certificate but respondent failed to provide the same till date.
9. That Directorate of Enforcement issued notice dated 10.08.2017 to the respondent, holding respondent liable under prevention of money



laundring Act, 2022. Further asking the respondent to submit the various documents and imposing restriction on the said property of the complainant and thereafter, vide notice dated 15.06.2021 same was withdrawn by the Directorate of Enforcement.

10. That the respondent was sent a legal notice dated 19.11.2021 for handing over of the possession, for payment of delayed possession charges, for quashing of the illegal demands and for getting the Conveyance deed in favor of the complainant. Respondent instead of handing over the possession of the plot send reminder letter dated 04.05.2016 to the complainant and demanding an amount of Rs 39,17,890/- under various heads like non-construction penalty charges, holding charges, maintenance charges, legal charges etc. which the complainant is not bound to pay as per the agreed payment plan.
11. That the complainant is entitled to get delay possession charges with interest at the prescribed rate from date of application/payment to till the realization of money under section 18 & 19(4) of Act.”

### **C. RELIEF SOUGHT**

12. Complainant in his complaint has sought following relief:
  - i. It is most respectfully prayed that this Hon’ble Authority be pleased to order the respondents to handover the possession after completing the plot in all aspects to the complainant as soon as possible.





- ii. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondents, not to cancel the allotment of unit.
- iii. It is most respectfully prayed that this Hon'ble Authority be pleased to restrain the respondents from raising any fresh demand with respect to the project.
- iv. It is most respectfully prayed that this Hon'ble Authority be pleased to set aside letter of offer of possession dated 22.07.2013 and also the wrongly charged holding charges and interest levied on the complainant.
- v. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondents to pay the balance amount due to the complainant from the respondents on account of the interest, as per the guidelines laid in RERA, 2016, before signing the conveyance deed/sale deed.
- vi. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondents not to charge anything irrelevant which has not been agreed to between the parties, which in any case is not payable by the complainant.
- vii. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondents not to ask for the monthly maintenance charges for a period of 36 months or more before giving actual possession of unit completed in all aspects.



- viii. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondents not to force the complainant to sign any indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.
- ix. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondents to pay delay possession charges to the complainant.
- x. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondents to kindly handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit.
- xi. It is most respectfully prayed that this Hon'ble Authority be pleased to pass any other interim reliefs which this Hon'ble Authority thinks fit in the interest of justice and in favour of the complainant.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

Learned counsel for the respondent filed detailed reply on 04.07.2023 pleading therein:

13. "That the complainant cannot get his claims adjudicated under the provisions of 2016 Act and Rules framed thereunder inter-alia keeping in view the fact that the project in respect whereof complaint has been made does not fall under the jurisdiction of this Ld. Authority. Instant project against which the complaint is made is

not registered with the Authority so Ld. Authority has no jurisdiction to entertain the complaint.

14. That the instant complaint is not maintainable as the project does not fall under the category of 'On-going project' as the respondent had received the Completion Certificate on 05.08.2013 of the project in question in prior to the commencement of RERA Act, 2016.
15. That complainant failed to fulfill his obligations towards the payment plan opted by him and made several defaults of payments and even refused to clear the outstanding against him at the time of offer of possession of the said plot to the complainant meaning thereby that the complainant since from the time of booking had sole intention to dupe the respondent and not to take possession of the allotted unit. Respondent informed about the current status of the said project to the complainant as and when enquired by the complainant but then also the complainant refused to take possession for the reasons known best to him and ignored all the reminders to pay the outstanding dues against him.
16. That offer of possession had been made to the complainant on 22.07.2013 and complainant had been asked to clear the outstanding amount. Respondent had sent various letters/reminders dated 02.09.2013, 10.10.2013, 18.11.2013, 17.10.2014 for intimation of outstanding dues against the complainant but the complainant did

not show his willingness to make payment and disrespect the requests of the respondent and did not turn to make payment within the specified time. Copy of reminder/letters are annexed as Annexure R-2 (colly). Complainant has violated the terms of Section 19 (6) of RERA Act, 2016 which says that the allottee shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement.

17. That the instant complaint is barred by limitation as the project had received Completion Certificate in year 2013 and possession had been offered in year 2013 itself, but the complainant never turned up to take possession of the unit. Now, present complaint is filed in September, 2022, i.e. almost 10 years after completion of project and offer of possession.
18. That complainant is himself at fault for not taking possession and not clearing the outstanding amount. Moreover, it is the complainant who is indulging the respondent in unnecessary and false litigations. In year 2017, ED initiated enquiry against the complaint under PMLA and Smuggling Act and attached assets of the complainant. The letter of ED and reply to said letter filed by the respondent are annexed as Annexure-5 (colly). Directorate of Enforcement, Government of India directed the respondent vide letter dated 10.08.2017 not to allow any sale, transfer the titled of the unit in

question. The Id. Assistant Director of ED vide letter dated 15.06.2021 withdrew the instructions issued on 10.08.2017. However, perusal of the said letter of ED dated 15.06.2021 shows that the ED directed to release some other property and not the property at express city. Copy of letter of ED dated 15.06.2021 is annexed as Annexure R-6.”

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT**

19. During oral arguments learned counsel for the complainant insisted upon possession of booked plot stating that respondent had not issued valid offer of possession till date. She pressed upon delay interest for the delay caused in handing over of possession. In respect of issue of ED she referred to letter dated 15.06.2021 at page no.81 whereby plot no. involved in case stands de-freezed. On the other hand, Learned counsel for the respondent reiterated arguments as were submitted in written statement and further submitted that project had already received Completion Certificate way back in year 2013 and in same year possession stands offered to complainant. No reason/justification has been provided by complainant for not taking possession till date. Reminders issued to complainant have been attached in file for reference. Now, complainant is liable to pay holding charges along with other remaining due amount for accepting possession of unit.

**F. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT.**

**F.I That the project had already received completion certificate on 05.08.2013 so the project does not get covered into definition of 'on-going project' and is not within purview of RERA Act,2016.**

With respect to objection raised by respondent that the jurisdiction of the Real Estate Regulatory Authority, Panchkula, is barred because the project in question is not an 'on-going project' for the reason that project was completed before the RERA Act, 2016 came into force and had also received completion certificate on 05.08.2013. In this regard, it is observed that the issue as to whether project shall be considered as "on-going project" has been dealt with and settled by the Hon'ble Supreme Court in **Newtech Promoters and developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** herein reproduced:

*" 37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority."*





Wherein Hon'ble Apex Court held that the projects in which completion certificate has not been granted by the competent authority, only such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder.

In light of aforesaid observations, Authority observes that respondent had received part completion certificate on 05.08.2013 not the completion certificate. Moreover, the receipt of part completion certificate does not absolve the respondent of its obligations cast upon it pertaining to handing over of possession of plot and execution of conveyance deed. The RERA Act, 2016 was enacted to ensure that both parties, i.e., respondent-promoter as well as complainant-allottee duly fulfils their respective obligations as per agreement for sale executed between them. Herein, the obligation of respondent to actual handover possession of plot still remains which is reoccurring cause of action and the allottee is well within its right to avail relief/remedy under the RERA Act, 2016.



**F.II Objection raised by respondent that project is not registered therefore the provisions of RERA Act does not apply.**

Authority observes that the respondent has taken a stand that present complaint is not maintainable for the reason that it pertains to an unregistered project of the respondent, and the reliefs sought does not fall within the jurisdiction of this Hon'ble Authority. In this regard it is observed that there is nothing on record to prove that respondent has obtained the completion certificate on the date of the commencement of the RERA Act, 2016, therefore on the commencement of RERA Act, 2016 project in question was within the ambit of the definition of ongoing project. Further, as per proviso to Section 3(1) of the RERA Act, 2016 only those project shall be excluded from ongoing project for which completion certificate was received prior to commencement of RERA Act, 2016. In present complaint respondent had not received completion certificate before commencement of RERA Act, 2016. Therefore, project is in ambit of ongoing project and registrable. Furthermore, issue that whether this Authority has jurisdiction entertain the present complaint as the project is not registered has been dealt and decided by the Authority in **complaint no. 191 of 2020 titled as *Mrs. Rajni and Mr. Ranbir Singh vs Parsvnath Developers Ltd.*** Relevant part of said order is being reproduced below:



*"14. RERA is a regulatory and protective legislation. It is meant to regulate the sector in overall interest of the sector, and economy of the country, and is also meant to protect rights of individual allottee vis-a-vis all powerful promoters. The promoters and allottees are usually placed at a highly uneven bargaining position. If the argument of learned counsel for respondents is to be accepted, defaulter promoters will simply get away from discharging their obligations towards allottees by not getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them accountable."*

Also, Section 11(4) and Section 18 of the RERA Act, 2016 that provides for obligation of the promoter does not distinguish between registered and unregistered project nor does it provides that the remedy u/ Section 18 will be available/applicable only to the allottees of a registered project. Therefore, provision of RERA act, 2016 will apply to respondent. Furthermore, as per Section 34(c) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder. Therefore this Authority has complete jurisdiction to entertain the captioned complaint entertain and objection raised by the respondent regarding maintainability of the present complaint is rejected.

**F.III Objection raised by the respondent that complaint is barred by limitation.**

Respondent has also taken objection that complaint is grossly barred by limitation. Reference in this regard is made to the judgement of Hon'ble Apex Court Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise wherein it was held that Limitation Act does not apply to quasi-judicial bodies. Further, in this case the promoter has till date failed to fulfil their obligations because of which the cause of action is re-occurring. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the limitation Act 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not Courts.

**G. ISSUES FOR ADJUDICATION**

20. Whether the complainant is entitled to the reliefs sought or not?

**H. OBSERVATIONS AND DECISION OF THE AUTHORITY**

21. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:



- (i) Admittedly, complainant in this case had purchased the allotment rights qua the plot in question in the project of the respondent in the year 2012 against which an amount of ₹ 35,57,700/- already stands paid to the respondent. Out of said paid amount, last payment of Rs 34,57,500/- was made to respondent on 20.06.2012 by the complainant which implies that respondent is in receipt of total paid amount since year 2012 whereas fact remains that actual handing over of possession of the unit in question has not been made till date. Respondent has not raised any objection to the receipt of claimed paid amount.
- (ii) Plot buyer agreement was executed between the parties on 20.06.2012 and as per clause 34 of it, possession of the unit was supposed to be delivered upto 20.06.2015. In the written statement submitted by the respondent, it has been stated that the offer of possession was made to complainant on 22.07.2013. But the same was not accepted by complainant. Further, respondent had issued various reminders dated 02.09.2013, 10.10.2013, 18.11.2013, 17.10.2014 but complainant did not come forward to accept the possession of the unit. As per complainant's version, offer of possession was not a valid offer as it was not supported with completion certificate. However,



issuance of offer of possession and reminders have not been denied by the complainant. Respondent has nowhere pleaded that the said/impugned offer of possession issued to the complainant was accompanied by part completion certificate. Perusal of record reveals that part completion certificate was issued to the respondent/promoter on 05.08.2013. It is further clear that letter dated 22.07.2013 was merely a letter requesting complainant for completing the necessary formalities and pay the balance amount. However, such communication cannot be deemed to be an offer of possession. When the offer of possession was not accompanied by part completion certificate at the time of offer of possession therefore, offer of possession issued on 22.07.2013 is not a valid and legal offer of possession. Thereafter, it is not proved on record that after receiving part completion certificate the respondent has offered any fresh offer of possession/statement of account of receivables and payables. As per the principle laid down by the Authority in such circumstances, the complainant is entitled to delay interest from the deemed date of possession till date of obtaining part completion certificate. Therefore, Authority is of considered view that offer of possession issued on 22.07.2013 is not a valid offer of possession and till date no valid offer of





possession has been issued to the complainant. The statement of accounts given by the respondent to complainant have to be sent to complainant afresh. Any amount, be it holding charges or interest or any balance amount etc., latest figure of same is not available on record and neither of the parties argued on it with detailed documentary evidence. Hence, respondent is directed to issue fresh statement of accounts of receivables and payables and complainant is at liberty to raise objection/file fresh complaint if any issue pertaining to receivables and payables still survives.

(iii) In respect of relief of delay interest, the complainant is entitled to delay interest for the delay caused in handing over of possession. As discussed above, the complainant's entitlement for receiving delay interest is w.e.f deemed date of possession till/ upto 05.08.2013 (date of receipt of part completion certificate). It is pertinent to mention here that deemed date of possession in present case is 20.06.2015, which implies that no delay has been caused by respondent in issuing of offer of possession. It is relevant to refer letter dated 17.10.2014 whereby respondent has requested the complainant to pay balance amount for registration of plot in his name. Contents of said letter is reproduced below for reference:-



*"Sub: Registration of your plot no. B-87 in Express City Sector-35, Sonipat.*

*Dear Sir/Madam*

*We are in process of registering the plots. We request you to complete the necessary formalities and pay the balance amount, if any to enable us to register the plot in your name.*

*In this connection, you may please contact Mr. Jaideep Dhiman on +919313132920 for further clarification and completion of the formalities"*

Complainant duly accepts receipt of aforesaid letter along with other reminders. But no objection in writing has been ever conveyed by the complainant to respondent towards said letters/reminders. Complainant has been unable to prove on record as to what were the hindrances/obstacles for him to take possession of his plot at that time during year 2013-2014. Moreover, there is no delay caused in issuing of offer letter/reminders to complainant so complainant is not entitled to relief of delay interest. At this stage, respondent is directed to invite complainant for actual handing over of possession of plot along with fresh statement of receivables and payables. Same direction stands issued for complaint no. 2402/2022.

(iv) Complainant in relief sought has prayed for following reliefs:-

*"ii. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondents, not to cancel the allotment of unit.*



- iii. *It is most respectfully prayed that this Hon'ble Authority be pleased to restrain the respondents from raising any fresh demand with respect to the project.*
- v. *It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondents to pay the balance amount due to the complainant from the respondents on account of the interest, as per the guidelines laid in RERA, 2016, before signing the conveyance deed/sale deed.*
- vi. *It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondents not to charge anything irrelevant which has not been agreed to between the parties, which in any case is not payable by the complainant.*
- viii. *It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondents not to force the complainant to sign any indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.*
- x. *It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondents to kindly handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit."*

In respect of aforesaid reliefs, it is observed that complainant has neither argued nor pressed upon these reliefs during course of arguments. Moreover, aforesaid reliefs cannot be awarded as a blanket order/directions. Complainant is required to prove each of the allegations with proper documentary evidence, which has not been done in this case. Hence, no direction is issued to respondent against said reliefs.

(v) Vide relief clause (vii) complainant has prayed for "*It is most respectfully prayed that this Hon'ble Authority be pleased*



*to order the respondents not to ask for the monthly maintenance charges for a period of 36 months or more before giving actual possession of unit completed in all aspects."* In order to adjudicate this issue, clause 19 of the plot buyer agreement is referred which is as follows:-

*"19. The purchaser agrees to enter into a separate maintenance agreement with the maintenance agency so appointed by the Seller for the said purpose. The purchaser agrees to execute the Maintenance agreement before the taking over of the possession of the said plot. The purchaser agrees to be bound by the terms of Maintenance agreement and pay the maintenance charges and the maintenance security at the rate decided by the seller for the same."*

Perusal of aforesaid clause reveals that for maintenance charges, separate maintenance agreement has to be executed with the appointed maintenance agency. As such no separate maintenance agreement has been executed by the complainant. So, respondent cannot claim maintenance charges of 36 months from complainant.

(vi) Another issue which remains to be adjudicated is disputed charges:- *Advance monthly maintenance for 36 months of Rs 36,587/-, Legal charges of Rs 12,360/-, IFMS of Rs 80,400/- and club charges of Rs 56,180/-.* Advanced monthly maintenance charges has been discussed in above paragraph. In respect of legal charges and IFMS, clause 5.8 and 5.10 of plot buyer



agreement is referred which provides that complainant is liable to pay these charges.

*"Clause 5.8-Legal charges as determined by the Seller.*

*Clause 5.10-Security Deposit for electricity, water and sewage, Maintenance charges and Maintenance security."*

In respect of club charges, it is observed that said charges are payable by complainant only if the facility of club is operational at site.

### **I. DIRECTIONS OF THE AUTHORITY**

22. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to handover actual physical possession of plot to the complainant along with statement of account of receivables and payables issued in compliance of directions passed in this order within 45 days of uploading of this order.
- (ii) Complainant will remain liable to pay balance consideration amount, if any, to the respondent at the time of actual physical possession offered to him.



(iii) 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 respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

(iv) The respondent shall not charge anything from the complainant which is not part of the agreement to sell.

23. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.

  
CHANDER SHEKHAR  
[MEMBER]

  
NADIM AKHTAR  
[MEMBER]

  
PARNEET S. SACHDEV  
[CHAIRMAN]